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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 12-12020-mg

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In the Matter of:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

June 10, 2015

10:02 AM

B E F O R E:

HON. MARTIN GLENN

U.S. BANKRUPTCY JUDGE

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Trial Regarding Claim No. 386 Filed by Barry Mack

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1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. We're here
3 in Residential Capital, number 12-12020. This is in connection
4 with the trial regarding the claim, claim 386 filed by Barry
5 and Cheryl Mack. May I have the appearances, please,
6 plaintiff?

7 MR. GARBER: Your Honor, David Garber on behalf of the
8 claimants, Barry and Cheryl Mack.

9 THE COURT: Thank you.

10 MR. LEWIS: Good morning, Your Honor. Adam Lewis and
11 Kristin Hiensch, H-I-E-N-S-C-H, on behalf of the ResCap
12 Borrower Claims Trust.

13 THE COURT: Thank you very much. All right.

14 Let's just -- before we get started, let's just review
15 how we're going to proceed today and tomorrow. I've reviewed
16 the pre-trial submissions. I have the binders with the
17 evidence in front of me. Obviously none of it is in evidence
18 until offered and admitted by the Court.

19 As I understand it, Mr. Lewis, your witness not
20 available today, but is tomorrow, correct?

21 MR. LEWIS: Yes, Your Honor. If the Court would like
22 details, I'm happy to give them to you.

23 THE COURT: No, that's unnecessary. I think you had
24 advised certainly the Court, I assume Mr. Garber as well, about
25 that.

1 MR. LEWIS: I did, yes.

2 THE COURT: And I had set aside the two days.
3 Hopefully we won't need the two full days. But Mr. Garber,
4 you're going to be calling two witnesses. Is that correct?

5 MR. GARBER: Yes, Your Honor. Two witnesses: Jewel
6 DeMore and Barry Mack.

7 THE COURT: Okay. All right. So is there anything
8 either of you want to raise before we begin?

9 MR. LEWIS: The only thing I can think of, Your Honor,
10 is -- I don't know if this is the right moment, but Mr. Garber,
11 in preparing for trial, went through his own files and found a
12 document that's of consequence --

13 THE COURT: Just hang on. Let me make -- go ahead.
14 Say it again.

15 MR. LEWIS: Mr. --

16 THE COURT: He found a document, yes.

17 MR. LEWIS: -- of consequence, which he sent to me,
18 which I would like to have put in the record as well. I have
19 it with me today. It's a potentially very important document.
20 It's not on our current exhibit list because we didn't have it.

21 THE COURT: That's fine. I take it, Mr. Lewis, you're
22 not objecting to the document -- either you're going to offer
23 it or Mr. Garber's going to offer it. The fact that it was
24 produced late, I mean, that's not uncommon to have --

25 MR. LEWIS: I'm not complaining --

1 THE COURT: -- a few odds and ends come up at -- my
2 biggest concern is when somebody tries to spring it on somebody
3 during the trial. But you have the document, you want to be
4 able to use it. You'll either offer it or Mr. Garber will
5 offer it, and if I hear objections, I'll rule on the
6 objections.

7 MR. LEWIS: Okay. It's just not on our exhibit list.
8 That's why I wanted --

9 THE COURT: That's fine.

10 MR. LEWIS: -- to raise now.

11 THE COURT: Okay.

12 MR. LEWIS: And Mr. Garber, I credit it with sending
13 it to me when he found it.

14 THE COURT: That's fine. Okay.

15 Mr. Garber, anything you want to raise before we
16 start?

17 MR. GARBER: Your Honor, I have no objection. I
18 unfortunately found this later than I would have liked --

19 THE COURT: It's okay. I don't hear Mr. Lewis
20 complaining about that aspect of -- both of you have proceeded
21 in a very straightforward and good-faith manner. So I'm not
22 raising any issues about it.

23 So let me ask, do you wish to make an opening
24 statement?

25 MR. GARBER: No, Your Honor. I'll waive opening

1 statements.

2 THE COURT: Okay. Mr. Lewis?

3 MR. LEWIS: I'll waive as well, Your Honor.

4 THE COURT: Okay. All right. Mr. Garber, call your
5 first witness.

6 MR. GARBER: Your Honor, if I could take a minute.

7 The manner in which I intend to proceed is I have a trial
8 notebook here --

9 THE COURT: Okay.

10 MR. GARBER: -- which has not all of the exhibits, but
11 excerpts from the exhibits. So I will call my witnesses and I
12 will go over and identify those excerpts through my witness,
13 but the actual exhibits, of course, will already have been
14 submitted in the file.

15 THE COURT: Okay. Any problem with that, Mr. Lewis?

16 MR. LEWIS: Not at all, Your Honor.

17 THE COURT: Okay.

18 MR. LEWIS: As long as we can find what he's talking
19 about, I'm fine with that.

20 THE COURT: Okay. And I think we probably -- I think
21 I filed some order that laid out my usual trial procedures, but
22 just let me briefly say that obviously, the witnesses testify
23 from the witness stand, they'll be sworn by the reporter. If
24 at any time you wish to approach the witness to show him or her
25 a document or a portion of a document, you don't have to ask

1 for permission to approach the witness.

2 And Mr. Lewis, if you wish to be up there to see
3 what's being pointed at, you likewise can go there without --
4 you don't have to ask each time you want to approach a witness.
5 I assume neither of you are going to abuse that. So I'd
6 just -- I don't enforce the rule about entering the well the
7 way some judges do that I was familiar with before. So I try
8 to keep this, obviously, professional and moving forward.

9 I do prefer that when a witness is questioned, they're
10 questioned from the podium rather than from the table. And
11 obviously if you need to go back to your table to find
12 documents or anything, you don't have to -- you can just go
13 ahead and do it. Okay.

14 MR. GARBBER: Yes, Your Honor.

15 THE COURT: So call your first witness.

16 MR. GARBBER: Your Honor, I would like to call to the
17 stand, Barry Mack.

18 THE COURT: If you would just -- before you sit down,
19 Mr. Mack, if you would just raise your right hand, and you'll
20 be sworn, okay?

21 (Witness sworn)

22 THE COURT: All right, please have a seat. And I
23 believe there's a pitcher and some cups up there, so if you
24 want some water, feel free at any time.

25 THE WITNESS: Thank you.

1 THE COURT: Okay? All right, Mr. Garber.

2 MR. GARBER: Your Honor, may I approach the witness
3 with the --

4 THE COURT: Yes, absolutely. Like I say, you don't
5 have to ask permission.

6 MR. GARBER: I have provided the Court with two copies
7 of the trial notebook and Mr. Lewis with a copy, and I have a
8 copy. And I'll be using that in my examination.

9 THE COURT: Okay.

10 DIRECT EXAMINATION

11 BY MR. GARBER:

12 Q. Mr. Mack, would you please state your full name for the
13 record?

14 A. Barry Mack.

15 Q. And how old are you, Mr. Mack?

16 A. Seventy-three.

17 Q. You were married to Cheryl Mack?

18 A. Yes, I was.

19 Q. When were you married to her?

20 A. We were married for thirty years, exactly what year --

21 Q. And she passed away in 2013?

22 A. Yes, she did.

23 Q. At which time you were still married to her?

24 A. Yes.

25 Q. And now you are the executor of her estate?

1 A. Yes.

2 Q. Mr. Mack, what sort of educational background do you have?

3 A. I graduated high school, military service, twenty-six
4 years in the police department.

5 Q. Which police department?

6 A. Edgewater Park Township, New Jersey.

7 Q. And did there come a time -- you of course lived in New
8 Jersey during that time, correct?

9 A. Yes, sir.

10 Q. Did there come a time when you moved to the State of
11 Florida?

12 A. It was after I -- we retired.

13 Q. Do you recall the approximate year?

14 A. Dates and times are spinning around my head.

15 Q. Just do the best you can.

16 A. Nineteen years --

17 THE COURT: Are you able to help him out?

18 MR. GARBER: I think it was about 2001 --

19 THE COURT: Mr. Garber?

20 MR. GARBER: -- but I'm not sure.

21 MR. LEWIS: Your Honor, I was going to say if Mr.

22 Garber wants to lead his witness in some things like this, it's
23 fine with me.

24 THE COURT: That's fine.

25 Q. Was it about 2001?

1 A. Yes, sir.

2 Q. And did you go down there and you bought a house to live,
3 didn't you?

4 A. Yes, we did.

5 Q. And then you sold that house and you bought another house?

6 A. Yes, sir.

7 Q. And then you sold that house and you bought a house on
8 Egret Avenue (ph.), is that true?

9 A. Yes, it is.

10 Q. And all those houses were owned with you and your wife,
11 Cheryl?

12 A. Yes, of course.

13 Q. Now, can you describe the house to us on Egret Avenue,
14 briefly. How many bedrooms, what kind of location, that sort
15 of thing?

16 A. It was four -- four-bedroom, two-story house, three-and-a-
17 half bathrooms. It had a library, two-car garage, swimming
18 pool in the back yard with a hot tub in it, and a dock -- a
19 dock out back for a boat.

20 Q. Okay. When you bought the house, was it new?

21 A. No, it was not.

22 Q. Was it lightly used?

23 A. Yes.

24 Q. So it was in good condition?

25 A. Yes, it was.

1 Q. Do you recall what you paid for the house?

2 A. Approximately one-and-a-half million.

3 Q. And you put down some cash on that house, didn't you?

4 A. Yes, we did.

5 Q. And you had to finance a portion of it?

6 A. Yes.

7 Q. Did you finance about a million dollars?

8 A. Yes.

9 Q. So you were able to put down several hundred thousand in
10 the down payment?

11 A. Yes, we did.

12 Q. You had savings that you could do that?

13 A. Yes.

14 Q. And what was your source of income after you moved into
15 that house?

16 A. Well, retirement pay for myself; and my wife was
17 receiving -- what was it -- disability and Social Security.
18 Plus we had a lot of savings from inheritances. We had money
19 invested in stocks and bonds. We were slowly using the savings
20 and the stocks to keep the payments going.

21 Q. We're not quite there yet. I'll get there in a minute.

22 What was the nature of Mrs. Mack's disability?

23 A. She began having problems and her kidneys were failing.
24 And she was -- had to be hospitalized.

25 Q. Now, you said she was on Social Security disability. Is

1 that correct?

2 A. Yeah.

3 Q. And she had been that way for some time when you came to
4 Florida, hadn't she?

5 A. Yes.

6 Q. And why was she on disability?

7 A. She was on disability for a while. She was unable to work
8 because of her kidneys weren't functioning right. Just didn't
9 function right.

10 Q. Was she receiving, when you were in Florida, about 1,335
11 dollars a month from Social Security disability?

12 A. Yes.

13 Q. And you were receiving a pension from the police
14 department in New Jersey?

15 A. Yes, sir.

16 Q. How much were you receiving?

17 A. It was 2,500 dollars a month.

18 Q. And you had other sources of income, you personally,
19 besides that?

20 A. No.

21 Q. Didn't you have Social Security?

22 A. Oh, yes, I had Social Security. But --

23 Q. And how much was your Social Security when you started
24 receiving it?

25 A. I have no idea. I don't know.

1 Q. Did you start receiving it when you came to the age of
2 sixty-five?

3 A. Yes, I did.

4 Q. So you didn't take early Social Security retirement?

5 A. No.

6 Q. Was the only source of your income, then, your police
7 retirement and your Social Security?

8 A. Yes.

9 Q. You personally?

10 A. Yes, sir.

11 Q. Now, you made some money every time you sold a house down
12 in Florida, didn't you?

13 A. Yes, we did.

14 Q. And that added to your capital?

15 A. Yes.

16 Q. And that enabled you to buy this house on Egret and put
17 down money?

18 A. Right. Yes, sir.

19 Q. How old was Mrs. Mack when she passed away?

20 A. Sixty-two.

21 Q. So she died in 2013. Is that correct?

22 A. That's correct.

23 Q. And she was sixty-two at that time?

24 THE COURT: You have to answer to that audibly, if you
25 can?

1 A. Yes, she was.

2 Q. What sort of educational background did she have?

3 A. She graduated high school. She went to a computer school
4 in Philadelphia and became a computer programmer-analyst for
5 Tyco Toys. And after they moved then she moved for several
6 other companies after that.

7 Q. Did there come a time when she started to have problems
8 with her liver?

9 A. Yes. Yes, sir.

10 Q. And would that have been in the late 1900s (sic) and early
11 2000s?

12 A. Yes.

13 Q. Do you know what the problem was with her liver?

14 A. At that time, we were in New Jersey, and she would -- she
15 had too much iron in her blood. It was -- she had to get
16 rid -- they were drawing blood from her once a month to keep
17 the liver -- or keep the level of the iron in her blood a
18 little lower. And she was told that she would need a --
19 probably need a liver transplant in the near future.

20 Q. As you know, her liver problems were caused by this iron
21 excess that she had in her blood?

22 A. That's how it started, yes.

23 Q. Was that the basis of her Social Security disability?

24 A. Yeah, I believe so. Yes.

25 Q. Did she have to have a liver transplant?

1 A. Yes, she did.

2 Q. And when did she have the liver transplant, to the best of
3 your memory?

4 A. After we moved to Florida. I'm not sure of the year.

5 Q. But sometime in the early 2000s?

6 A. Yes.

7 Q. Was that at the Mayo Clinic in Florida?

8 A. Yes, it was.

9 Q. And did the liver transplant, did that improve her
10 condition, or did she still have an iron rich condition?

11 A. No, she was -- that cured her condition. She had no
12 problem after that.

13 Q. Did they put her on immunosuppressant drugs?

14 A. Yes.

15 Q. Antirejection drugs?

16 A. Yes.

17 Q. Did she have to take those for the rest of her life?

18 A. Yes.

19 Q. Mr. Mack, you have a -- well, let me set the stage a
20 little bit more. In the summer and fall of 2009, you were
21 making your payments on your mortgage?

22 A. Yes, we were.

23 Q. And that's on the house in Egret?

24 A. Yes, it was.

25 Q. Were you current on your mortgage at that time?

1 A. Yes.

2 Q. Do you recall who your mortgage was with?

3 A. GM -- GMACM.

4 Q. And sometime that summer, did you receive a notification
5 that your mortgage was being foreclosed?

6 A. Yes, we did.

7 Q. And at that point, you hired an attorney to defend you on
8 that?

9 A. Yes, we did.

10 Q. Do you recall the company that was foreclosing on your
11 house?

12 A. It was Deutsche Bank.

13 Q. Had you ever gotten a mortgage from Deutsche Bank?

14 A. No.

15 Q. Had you ever done business with Deutsche Bank?

16 A. No, sir.

17 Q. Were you ever informed that Deutsche Bank bought your
18 mortgage?

19 A. No, I was not.

20 Q. Were you ever informed that they had any rights to your
21 mortgage, or the servicing, or ownership rights at all?

22 A. Nothing. No.

23 Q. So what did you do when you got your notice of foreclosure
24 besides hiring an attorney?

25 A. We called GMAC Mortgage and asked them several times if

1 they still had -- held our mortgage and asked if we were
2 delinquent, and they said no. We were paid up. There was no
3 problem. And they did not have any idea of -- or couldn't tell
4 me anything about Deutsche Bank.

5 Q. Nevertheless, did the foreclosure continue?

6 A. Yes, it did.

7 Q. When you first called GMACM to ask about why you were
8 getting foreclosed on, was that in August of 2009?

9 A. Yes, it was.

10 Q. And in September of 2009, your attorney filed an answer
11 denying that you were in default on your mortgage, correct?

12 A. Yes. Yes, sir.

13 Q. Did you make calls to GM in September to ask why you were
14 under foreclosure?

15 A. I believe so, yes.

16 Q. And did you make calls in October of 2009 to inquire or
17 complain about the foreclosure?

18 A. Yes, we did.

19 Q. You did that to General Motors?

20 A. Yes.

21 Q. And how did you know what numbers to call?

22 A. On -- the numbers were on statements and on the paperwork
23 that we had from GMAC.

24 Q. Did you call and complain or inquire about the foreclosure
25 of General Motors in November of 2009?

1 A. Yes, sir.

2 Q. Now, before you received the notice of foreclosure, had
3 you been in touch with General Motors to see if you qualified
4 for a mortgage relief on your payments under the Federal HAMP
5 Act?

6 A. Yes.

7 Q. Did you file an application with them?

8 A. Yes, sir.

9 Q. And did they require paperwork and supporting
10 documentation?

11 A. Yes.

12 Q. Did you send that to them?

13 A. Yes, we did.

14 Q. Did you do all that before the foreclosure was filed?

15 A. Yes.

16 Q. Did they give you an answer as to whether you qualified
17 for any mortgage relief in July of 2009?

18 A. No, we never received an answer.

19 Q. You never received an answer from them?

20 A. No, I don't believe so. No.

21 Q. Okay. So you didn't receive it in July. You didn't
22 receive an answer in August on your mortgage application -- on
23 your reduction application. Is that right?

24 A. Right.

25 Q. How about in September? Did you receive any answer from

1 them on your payment reduction application?

2 A. No.

3 Q. Did you receive an answer from them in October?

4 A. No.

5 Q. Did you receive an answer from them in November?

6 A. No.

7 Q. How about in December? Did you receive an answer from
8 them in December?

9 A. No, sir.

10 Q. Mr. Mack, you have in front of you what I have labeled
11 Creditor Barry Mack's Hearing Notebook, volume number 1. And I
12 would ask if you would be so kind as to turn to tab 1? Do you
13 see that, sir? Do you have that in front of you?

14 A. What was the --

15 Q. Tab 1. It's marked --

16 A. Yes, sir.

17 Q. -- as tab 1.

18 A. I have that one.

19 Q. There's a little tab sticking out of the notebook?

20 A. Yes.

21 Q. Okay. And do you recognize that document?

22 A. Yes, sir.

23 Q. I would ask if you would be so kind as to turn to page 3
24 of that document. And by the way, that document is labeled
25 under this tab, as Plaintiff's Exhibit number 17 to these

1 proceedings today. Do you see that in the bottom right-hand
2 corner of your document?

3 A. Yes.

4 Q. Okay. So please turn to page 3.

5 A. I have that.

6 Q. Is that your signature?

7 A. Yes, it is.

8 Q. And is that Cheryl's, your wife's signature?

9 A. Yes, it is.

10 Q. And did you sign this document on or about the date that
11 is listed on the front page, which, if you'll look, is October
12 6th, 2006?

13 A. Yes, sir.

14 Q. Did you agree to pay an interest rate of seven-and-an-
15 eighth percent on your loan? Down on the first page, paragraph
16 2.

17 A. Yes, I did.

18 Q. And you were going to pay all the payments to Primary
19 Residential Mortgage, Inc., is that true?

20 A. That's correct.

21 Q. Did you get this mortgage through a mortgage broker?

22 A. Yes.

23 Q. Do you recall the name of the mortgage broker?

24 A. No, I don't.

25 Q. Did you know when you signed this that you were agreeing

1 to make payments to Primary Residential of \$5,878.13 a month?

2 A. Yes.

3 Q. And you were supposed to do that for 120 months?

4 A. Yes.

5 Q. And did you know that at the end of that ten-year period,
6 that your payments would go up to \$7,749.92?

7 A. Yes.

8 Q. Do you recall your total income -- your income and your
9 wife Cheryl's income when you made this mortgage in October of
10 2006?

11 A. No, I don't.

12 Q. Was your income more than the payments which were 5,878?

13 A. Yes, they were.

14 Q. And was it 6- or 700 dollars more than that?

15 A. Yes, sir.

16 Q. So you had to live on -- after you made your mortgage
17 payment, you had to live on 6- or 700 dollars. Is that true?

18 A. Except from our savings and stock and stuff, yes.

19 Q. So you had supplemental --

20 A. Supplemental --

21 Q. -- funds available to use?

22 A. Yes.

23 Q. Did you, on your mortgage, have to pay your own real
24 estate taxes?

25 A. Yes, we did.

1 Q. Did you have to pay your own insurance?

2 A. Yes.

3 Q. And do you recall about how much you paid on your taxes
4 every year on that house?

5 A. I can't recall right now, no.

6 Q. Would it be fair to say that it was several thousands of
7 dollars --

8 A. Yes.

9 Q. -- 9- or 10,000 dollars?

10 A. Yes, it was. Yes, it was.

11 Q. And do you recall what your insurance payments were for
12 the house?

13 A. A couple thousand.

14 Q. And you made all those payments?

15 A. Yes, we did.

16 Q. And you made them all on time?

17 A. Yes, sir.

18 Q. And you were able to do that by drawing from your savings?

19 A. Yes.

20 Q. You did that for a period of time from roughly October
21 2006 until in April of 2009, you and your wife realized that
22 your savings were going down?

23 A. Yes, we did.

24 Q. And is that the time that you called GM to see if you
25 might qualify for this federal HAMP program?

1 A. Yes.

2 Q. Could you have continued to make the payments by drawing
3 on your savings, without the HAMP program?

4 A. No.

5 Q. Did you have any savings in April of 2009?

6 A. Yes, we did.

7 Q. So do you recall about how much you had in savings in
8 April of 2009?

9 A. Let's see. Roughly 50,000 dollars.

10 Q. So you used your savings and you were able to pay for
11 April, May, June, and July of 2009 on your mortgage. Is that
12 true?

13 A. Yes.

14 Q. And you were able to do that for August, September,
15 October, November and December of 2009?

16 A. Yes.

17 Q. Because you had enough savings to cover that?

18 A. Right. Yes, sir.

19 Q. And you wound up signing a contract for the sale of your
20 house in December of 2009, didn't you?

21 A. Yes, I did.

22 Q. If you would not have sold your house in December of 2009,
23 could you have continued to make payments on your house and
24 live in your house?

25 A. Not if they -- if they didn't cooperate on -- with us on

1 lowering our mortgage payment, no, we could not have.

2 Q. And did you realize, then, that because your living
3 payments and your house payments and your taxes and interest
4 were depreciating your savings, did you realize that it might
5 be financially wise to sell the house?

6 A. Yes, sir.

7 Q. So did you have the house listed for sale in the summer of
8 2009?

9 A. Yes, we did.

10 Q. Did you originally list it in March of 2008?

11 A. Yes.

12 Q. And do you recall the original listing price?

13 A. I believe it was like 1.5 or -6 million -- 1.5.

14 Q. Did you have to reduce the price?

15 A. Yes, we did.

16 Q. Do you recall how far you reduced it?

17 A. To 1.3, I believe it was.

18 Q. Okay.

19 A. 1.3.

20 Q. Okay. So tab number 1 is the note that you originally
21 signed, correct, that you had to make your mortgage payment?

22 A. Yes.

23 Q. Okay. If you would be so kind as to turn to tab number 3.
24 And that has a sticker on it for the purposes of these
25 proceedings of Plaintiff's Exhibit number 14. Would you please

1 look at tab number 3?

2 A. Yes, sir.

3 Q. Is that a letter that General Motors Mortgage sent to you
4 when you originally got your mortgage with them?

5 A. Yes, it is.

6 Q. Okay. Actually, you got your mortgage with Primary
7 Residential, to start with, didn't you?

8 A. Yes, sir.

9 Q. But you received this letter on October 14th, 2006, from
10 GMACM, and they told you in this letter that your loan was
11 transferred from Primary Residential to GMACM, effective
12 December 1st, 2006, didn't they?

13 A. Yes, sir.

14 Q. And if you'll look down to the bottom of the page -- or to
15 the two-thirds of the way down on the page, did this letter
16 tell you the address that you should use to write to GM if you
17 had any questions or concerns about your mortgage?

18 A. Yes, it does.

19 Q. Can you tell the Court what that address is that they gave
20 you?

21 A. Post Office Box 622, Waterloo, Iowa.

22 Q. Okay. Is it possible that would be Post Office Box 4622?

23 A. Yes, it is.

24 Q. Okay. And you wound up writing to General Motors about
25 the mortgage later on, especially in 2009, didn't you?

1 A. Yes, sir.

2 Q. And did you use this address?

3 A. I believe so, yes.

4 Q. Were you also given other addresses by General Motors to
5 write to?

6 A. There were one or two others that they had on --

7 Q. So when you were sending in your application for the HAMP
8 program, did you send some letters to those other addresses?

9 A. I guess so. Prob -- yes.

10 Q. Now, if you would be so kind as to turn to tab number 4,
11 which is marked on the bottom right-hand corner as Plaintiff's
12 Exhibit in these proceeds, number 18. Do you have that in
13 front of you, sir?

14 A. Servicing disclosure?

15 Q. Yes.

16 A. Yes.

17 Q. And was this a document that you received from Primary
18 Residential Mortgage at the time that you originally applied
19 for your mortgage and obtained it?

20 A. Yes, sir.

21 Q. And at that time, you read the document?

22 A. Yes, we did.

23 Q. And if you'd be so kind as to turn to the second page.
24 Does the document provide for you and your wife Cheryl to sign
25 the document?

1 A. Yes, it does.

2 Q. And is that your signature and your wife's signature on
3 the bottom of that page?

4 A. Yes, sir.

5 Q. And the date is August 29th, 2006?

6 A. Yes.

7 Q. And you gave this document to your mortgage broker?

8 A. Yes, sir.

9 Q. But you kept this copy?

10 A. Yes, we did.

11 Q. And if you would be so kind as to turn to tab number 5?
12 And it's marked at the bottom right-hand corner as Plaintiff's
13 Exhibit 12 to these proceedings.

14 A. Yes, sir.

15 Q. Have you ever seen this document before?

16 A. Yes, sir.

17 Q. Okay. If you would be so kind, please, to turn to the
18 second to the last page of tab number 5? Is that your
19 signature, sir?

20 A. The last page?

21 Q. Second to the last page.

22 A. Yes, it is.

23 Q. And that's your wife Cheryl's signature as well?

24 A. Yes, it is.

25 Q. And I see at the bottom that it is signed by Ray Bowie

1 (ph.) Esq. Do you see that, sir?

2 A. Yes, sir.

3 Q. And was he assisting you in handling this listing?

4 A. Yes, he was.

5 Q. And you also had another real estate agent that helped
6 you, too?

7 A. Yes.

8 Q. Do you recall her name?

9 A. Right now, I can't remember her name. I'll think of it.

10 Q. Okay, we'll get to that later.

11 If you would now turn back to the front page or the first
12 page of this tab number 5, your listing agreement?

13 A. Yes, sir.

14 Q. This was to cover your house on Egret Avenue in Naples,
15 Florida?

16 A. This is for Vanderbilt Avenue.

17 Q. Okay. Was that your house at 287 Egret Avenue? Look at
18 the property address under subparagraph (c).

19 A. Yes. That --

20 Q. And that was the last house that you owned in Florida,
21 right?

22 A. Yes, it is.

23 Q. Okay. And the listing price was 1,969,000. Is that
24 correct?

25 A. Yes.

1 Q. And was that the price that you had to lower progressively
2 as time went on and you weren't getting offers?

3 A. Yes, we did lower the price.

4 Q. If you would be so kind as to turn to the last page, now,
5 of this tab number 5?

6 A. Yes, sir.

7 Q. And you and your wife signed this brokerage relationship
8 disclosure form as well, in March 2008, didn't you?

9 A. Yes, sir.

10 Q. Would you please now turn to tab number 7? Do you have
11 that in front of you?

12 A. Yes, I do.

13 Q. Tab number 7 bears a Plaintiff Exhibit number 37 for these
14 proceedings, in the bottom right-hand corner. Have you ever
15 seen this letter before?

16 A. Yes, sir.

17 Q. Was this a letter that you received from GMAC Mortgage?

18 A. Yes, it is. Yes, it is.

19 Q. And in the top left-hand corner, the address that they
20 gave you to write concerning these issues was PO Box 780
21 Waterloo, Iowa? Is that right, sir?

22 A. That's correct.

23 Q. Do you know what the issues were that this letter
24 concerned?

25 A. I don't remember what the issue was on this letter.

1 Q. Were the issues that this concerned was the HAMP payment
2 reduction that you'd applied for?

3 A. Yes, it is.

4 (Pause)

5 Q. Mr. Mack, was this letter about your HAMP application --

6 THE COURT: I think he said yes. He said it was.

7 MR. GARBER: Oh, I'm sorry. I didn't hear that.

8 THE COURT: That's okay.

9 Q. And I see that GMAC signed it, "Customer Care Loan
10 Servicing" at the bottom of the paper. Do you see that?

11 A. Yes, I do.

12 Q. Okay. If you would be so kind, now, as to turn to tab
13 number 8? And you'll see it has Plaintiff's Exhibit number 38
14 for these proceedings on the bottom right-hand corner. And
15 immediately above that, plaintiff's exhibit number -- somebody
16 has written in "SS Pension" -- and I can't read the other word.
17 "Realty" maybe? Do you see that?

18 A. Yes, I do.

19 Q. Is that your wife's handwriting -- Cheryl Mack's?

20 A. Yes. Yes, it is.

21 Q. So is this a document that you received on or about August
22 28th, 2009 from GMAC?

23 A. Yes, sir.

24 Q. And is this letter also concerning your application for
25 your HAMP loan?

1 A. Yes, it is.

2 Q. If you would look to the bottom of the page, there's a
3 notice. Do you see that notice? Not quite the bottom of the
4 page, but two-thirds of the way down? Do you see the notice in
5 italics?

6 A. Yes, I do.

7 Q. Okay. When you got the letter, did you read the notice
8 that said it was an attempt to collect a debt?

9 A. Yes, sir.

10 Q. And the address that they gave you to write to concerning
11 any response to this letter is found at the bottom left-hand
12 corner of the page, and it's in Dallas, Texas, isn't it?

13 A. Yes, it is.

14 Q. If you would now turn to tab number 9. Do you have that
15 in front of you?

16 A. Yes, I do.

17 Q. And that's listed as Plaintiff's Exhibit number 16 to
18 these proceedings. Is this a letter that you signed?

19 A. Yes, sir.

20 Q. And that's your wife signature as well?

21 A. Yes, it is.

22 Q. And did you sign it on or about August 10th, 2009?

23 A. Yes, we did.

24 Q. Was this a letter that you sent to support your
25 application for mortgage payment relief under the HAMP program?

1 A. Yes.

2 Q. Do you know what address you sent it to?

3 A. I'm not sure which address it was in this -- one of them
4 actually had already sent --

5 Q. Okay.

6 A. -- stuff to.

7 Q. Would you be so kind, now, as to turn to tab 10? And that
8 bears a sticker of Plaintiff's Exhibit number 39 for
9 identification to these proceedings. Do you see that, sir?

10 A. Yes, I do.

11 Q. And this letter is dated September 30th, 2009?

12 A. Yes, sir.

13 Q. Did you receive this from GMAC Mortgage?

14 A. Yes, we did.

15 Q. And if you'll look towards the bottom of the page, you'll
16 see that same notice telling you that this is an attempt to
17 collect the debt. Do you see that?

18 A. Yes, it is.

19 Q. Did you read this letter when you got it?

20 A. Yes, sir.

21 Q. And did you get it on September 30th, 2009 or soon
22 thereafter?

23 A. Yes, sir.

24 Q. Somebody has circled a telephone number that's about
25 halfway down. Do you see that circle around the telephone

1 number?

2 A. Yes.

3 Q. Did your wife, Ms. Mack, do that?

4 A. Yes, I believe so.

5 Q. And is that a telephone number that you used in calling GM
6 about the issue that this document raised?

7 A. Yes.

8 Q. And was this document to ask you for further documentation
9 in support of your application for the HAMP program mitigation
10 request?

11 A. Yes, it is.

12 Q. At the bottom left-hand corner, they gave you the address
13 to write back as Dallas, Texas?

14 A. Yes, it is.

15 Q. If you would be so kind, now, as to turn to tab number 11?
16 And it's marked as Plaintiff's Exhibit 34 for identification
17 for these proceedings?

18 A. Yes.

19 Q. Mr. Mack, this letter is dated October 7th, 2009. Did you
20 and your wife Cheryl write it on about that date?

21 A. Yes, we did.

22 Q. And I see it has an address on it that this is GMAC
23 Mortgage in Dallas, Texas?

24 A. Yes.

25 Q. Did you send that to Dallas, Texas because it was in

1 response to the letters that you had received from General
2 Motors about your payment mitigation request?

3 A. Yes.

4 Q. Would you now turn to page number -- or tab number 12?
5 Are you there, sir?

6 Take a minute and get some water if you'd like.

7 THE COURT: You don't have an exhibit number on this
8 one? It's not on mine.

9 MR. GARBER: Your Honor, I don't have an exhibit
10 number on mine, either. I'm sure I can identify it later.

11 THE COURT: Yeah, that's fine. I just want to be sure
12 that if you're going -- you're going to have to mark it with an
13 exhibit number for the record. But you don't have to do it
14 right now.

15 MR. GARBER: I have a list of all my exhibits. I'll
16 check.

17 THE COURT: That's fine.

18 Q. Mr. Mack, have you ever seen this letter before that's
19 found at tab number 12?

20 A. Yes, I -- yes, I have.

21 Q. That's your signature at the bottom of the page?

22 A. Yes, sir.

23 Q. And that's also your wife's signature?

24 A. Yes, sir.

25 Q. And did you send this letter to GMAC Mortgage?

1 A. Yes, we did.

2 Q. And the address you sent it to was PO Box 4622, Waterloo,
3 Iowa?

4 A. Yes, sir.

5 Q. Did you put a first-class stamp on your envelope?

6 A. Yes.

7 Q. Did you personally put it in the mailbox?

8 A. Yes, I did.

9 Q. And did you send it out on or about the date of this
10 letter, which is October 26th, 2009?

11 A. Yes.

12 Q. And did you use this address because General Motors had
13 told you to use this address when they first signed onto your
14 mortgage back in October of 2006?

15 A. Yes, sir.

16 Q. Actually, you had help in obtaining this address from a
17 bookkeeper that you had?

18 A. Yes.

19 Q. And that was somebody in the neighborhood that came by to
20 help you from time to time, with your financial affairs?

21 A. Yes, sir.

22 Q. Do you recall her name?

23 A. I can't remember her now.

24 Q. Okay. Is this letter a letter that your wife, Cheryl
25 Mack, actually composed and typed?

1 A. Yes.

2 Q. And when you sent it to General Motors, you actually kept
3 a copy for your file?

4 A. Yes, we did.

5 Q. At the time that you sent this letter, was the foreclosure
6 still actively proceeding against you?

7 A. Yes.

8 Q. And you say in this letter that you believed that you were
9 not in arrears with General Motors Acceptance Corporation. Is
10 that true?

11 A. That's true, yes.

12 Q. And even though you said GMAC, did you mean General Motors
13 Acceptance Corporation and Mortgage?

14 A. Yes.

15 Q. Because that's who you sent it to, isn't it?

16 A. Yes, it is.

17 Q. Did you receive a response to this letter?

18 A. No, I don't think so.

19 Q. You didn't receive a response in November, did you?

20 A. No.

21 Q. You didn't receive a response in December?

22 A. No, sir.

23 Q. You didn't receive one in January of 2010?

24 A. No, sir.

25 Q. Have you ever received a response to this letter?

1 A. No.

2 Q. If you would be so kind as to turn to tab number 13. And
3 we have this one labeled as Plaintiff's Exhibit number 40 for
4 identification in these proceedings. Can you take a minute and
5 look at that? Do you have that in front of you, sir?

6 A. Yes, I do.

7 Q. Okay. That's a letter from GMAC Mortgage to you?

8 A. Yes, sir.

9 Q. And it has a date of November 4th, 2009. Did you receive
10 it shortly thereafter?

11 A. Yes, we did.

12 Q. And this letter is about your application for your
13 mortgage payment reductions?

14 A. Yes.

15 Q. And it is not a response to your letter that we just
16 looked at asking about help from the foreclosure that had been
17 filed by Deutsche Bank?

18 A. No.

19 Q. The address that they wanted you to respond to was PO Box
20 780 Waterloo, Iowa, concerning this, now?

21 A. Yes, it is.

22 Q. We'd seen earlier that they had an address on your
23 mortgage mitigation request to use Dallas, Texas, but now they
24 say at Waterloo, Iowa on the mitigation request?

25 A. Yes.

1 Q. Would you be so kind as to turn to tab number 14, which
2 there is a sticker for identification to these proceedings, as
3 Plaintiff's Exhibit number 41.

4 A. Yes, sir.

5 Q. And this is a letter that you received from GMAC Mortgage
6 on or about December 15th, 2009?

7 A. Yes, sir.

8 Q. And they talk about an escrow for taxes and insurance on
9 your house, don't they?

10 A. Yes.

11 Q. Can you explain to the Court why you believe you received
12 this letter?

13 A. I placed a telephone call to them and asked them why, and
14 they said that --

15 Q. You asked them why what?

16 A. They wanted -- they wanted to make sure that we had the
17 taxes paid and the insurance paid, and that they just wanted to
18 make sure it was paid. I said we were paying it all along, why
19 did you have to raise it and take over the payments on it? And
20 they said well, can't take a chance of you not being able to
21 pay your taxes and insurance bills.

22 Q. And so did they try to raise your payment that you were
23 paying to them? You were paying, at that time, 5,878 for
24 mortgage and principal, weren't you?

25 A. Yes, we were.

1 Q. Were they trying to raise how much your payment would be?

2 A. Yes, they did.

3 Q. What did they want to raise it to?

4 A. Approximately 12,000 -- 12,000 dollars.

5 MR. LEWIS: Your Honor, I don't see the relevance of
6 this to the issue before the Court, which is the October
7 26th --

8 MR. GARBER: Your Honor --

9 THE COURT: Overruled.

10 Q. So when you talked to the individual who had sent you this
11 letter and asked to raise your rate to 12,000 a month, did you
12 tell him how you were able to make your payments for your taxes
13 and insurance?

14 THE COURT: Are you both misspeaking when you say
15 12,000 dollars a month?

16 MR. GARBER: Pardon me?

17 THE COURT: I think you said 12,000 dollars a month?

18 MR. GARBER: Yes. They raised his payment from 5,878
19 to 12,000 a month.

20 THE COURT: Okay, go ahead.

21 Q. Did you explain to him how you were able to pay your taxes
22 and insurance?

23 A. Yes, I did.

24 Q. And what did you tell him?

25 A. I told him that we both retired, and we had saved for

1 retirement. We invested our money in a lot of company stock,
2 and just we inherited money from both our parents that passed
3 away. And we just saved it and bought -- at least we had
4 bought two houses and made money on the two houses that we had
5 bought and sold before we bought Egret Avenue.

6 Q. And did you tell him that you had been paying all your
7 taxes and insurance through the whole loan, yourself?

8 A. Yes.

9 Q. And did you told him that you could and would keep paying
10 those in the future?

11 A. Yes.

12 Q. Yourself?

13 A. Yes.

14 Q. And that you did not want and did not need an escrow?

15 A. Yes.

16 Q. Mr. Mack, if you would now be so kind as to turn to the
17 second volume of the documents that we would like to show to
18 the Court today. And would you please look at that binder?

19 A. Number 16?

20 Q. Yes, but I want you to turn to tab number 17.

21 A. Yes, sir.

22 Q. And that was listed as Plaintiff's Exhibit number 13 for
23 identification in these proceedings in the bottom right-hand
24 corner. Do you see that, sir?

25 A. Yes.

1 MR. LEWIS: Sorry, Mr. Garber, which are you on?

2 MR. GARBER: Tab number 17.

3 MR. LEWIS: Thank you.

4 Q. Mr. Mack, is this a contract to sell your house that you
5 signed?

6 A. Yes, it is.

7 Q. And if you would be so kind as to turn to the third page
8 of this tab?

9 A. Yes, sir.

10 Q. Do you have that in front of you, sir?

11 A. Yes.

12 Q. Is that your signature?

13 A. Yes, sir, it is.

14 Q. And the date is December 9th, 2009. Is that the date you
15 signed it?

16 A. Yes, it is.

17 Q. And your wife, Cheryl Mack, also signed it on that date?

18 A. Yes, she did.

19 Q. And Mr. Hogan, who wanted to buy your house at this price
20 was -- signed it before you signed it, on December 8th, 2009?

21 A. Yes, sir.

22 Q. Now, if you'll look down at the bottom, you'll see
23 beneath, Gulf Breeze Real Estate is the listing broker. The
24 sales associate was Sue Myhelic. Was that the name you were
25 trying to remember?

1 A. Yes, it is.

2 Q. Now, I would ask if you would be so kind as to turn to the
3 second page of this tab number 17. And would you please read
4 into the record what -- under the additional terms and
5 conditions on paragraph 7, number 1 is?

6 A. Number 1, it says, "Attached is an addendum to release of
7 pending foreclosure."

8 Q. And now, if you would turn to that addendum, which is
9 found immediately after your signature page? Do you have that
10 in front of you?

11 A. Yes.

12 Q. And this addendum was signed by you also on December 9th,
13 2009?

14 A. Yes, it was.

15 Q. And your wife, Cheryl?

16 A. Yes.

17 Q. And Mr. Hogan had signed it the day before?

18 A. Yes, sir.

19 Q. And if you would look to paragraph number 1 of the
20 addendum, would you please read the first sentence into the
21 record?

22 A. Page number 1 of --

23 Q. Paragraph number 1, the first sentence of that, on this
24 addendum?

25 A. "Upon acceptance of this offer" --

1 Q. No, I think we're in the wrong place.

2 THE COURT: Why don't you read it, Mr. Garber so --

3 Q. Let me read it to you and you tell me if you agree: "The
4 parties acknowledge the existence of a pending foreclosure
5 action pertaining to this property brought by Deutsche Bank
6 Trust Companies America, as trustees for the RALI 2007 QS3,
7 filed in Collier County Circuit Court, as case number
8 097336-CA, therein the foreclosure action."

9 That's in your copy, isn't it, sir?

10 A. Yes, it is.

11 Q. And the second sentence says, "Seller represents and
12 covenants to the buyer that this foreclosure is unfounded and
13 filed in error, and that seller is current on all payments and
14 not in arrears or default as to any obligation of seller's
15 mortgage." Do you see that sir?

16 A. Yes.

17 Q. And then if you will look down at paragraph number 2 under
18 those covenants, you will see in the last sentence -- and I
19 will read it to you: "As a result of this legal action, seller
20 anticipates that the foreclosure action will be dismissed prior
21 to the closing date of this transaction. Do you see that, sir?

22 A. Yes.

23 Q. And was that because you thought the foreclosure was
24 unfounded?

25 A. Yes.

1 Q. And you thought that you would win the foreclosure by that
2 time?

3 A. Yes.

4 Q. And this language was put in there to warn the buyer that
5 in fact you had a title problem that you were attempting to
6 address?

7 A. Yes, sir.

8 Q. There were a number of other pages under a second
9 addendum. Can you turn to them? They're immediately past this
10 addendum. Do you have that in front of you?

11 A. No, I don't.

12 Q. Let me show you where it is.

13 That is your signature, sir, at the bottom of the page?

14 A. Yes, sir.

15 Q. Bearing the date of December 9th, '09?

16 A. Yes.

17 Q. And Cheryl, your wife's, signature as well?

18 A. Yes.

19 Q. Signed by Mr. Hogan the day before?

20 A. Yes.

21 Q. And that was all part of the contract that you signed with
22 Mr. Hogan?

23 A. Yes, sir.

24 Q. And would you be so kind now as to turn to tab number 18?

25 And that is listed as Plaintiff's Exhibit number 24 to these

1 proceedings. Do you have that in front of you, sir?

2 A. Yes, I do.

3 Q. And you were originally sued for foreclosure by Deutsche
4 Bank. Did they also serve this notice of lis pendens on you?

5 A. Yes, they did.

6 Q. And I see that this was filed in the court on August 20th,
7 2009. Did you receive it when the sheriff came to your door,
8 some few days after that?

9 A. Yes.

10 Q. Do you recall the date in August you received this?

11 A. No, I don't.

12 Q. What was your understanding of the effect of this
13 document?

14 A. I had no idea what -- I believe -- I had no idea what was
15 going on. I -- I called them -- I called GMAC and asked them
16 if they had sold my mortgage, and they -- they told me no, we
17 did not sell your mortgage. And I asked are we all -- are we
18 paid up, do we owe any more, were we ever late? So they said
19 the payments are up to date. I asked if they knew anything
20 about Deutsche. They said that they didn't know anything about
21 Deutsche Bank foreclosing.

22 Q. And you had that -- the gist of that same conversation
23 with GM, not only when you got this in August but also in
24 September?

25 A. Yes, sir.

1 Q. And conversations in October?

2 A. Yes.

3 Q. And also in November --

4 A. Yes.

5 Q. -- of 2009?

6 A. Yes.

7 Q. Sometimes you called? Sometimes you called GM?

8 A. Yes, I did.

9 Q. And sometimes Cheryl called GM?

10 A. Yes.

11 Q. Were you both present for most of those calls?

12 A. Yes, we were.

13 Q. Would you please be so kind as to turn to tab number 19?

14 Do you have that in front of you, sir?

15 A. Yes, I do.

16 Q. This is marked as Plaintiff's Exhibit number 5 to these
17 proceedings. And to the best of your knowledge, did you
18 receive a copy of this notice of voluntary dismissal?

19 A. No, I did not.

20 Q. Okay. Did you find out, sometime in December of 2009,
21 that, in fact, Deutsche Bank had cancelled the foreclosure
22 lawsuit against you?

23 A. No, I did not.

24 Q. Did you find out, before the closing date of the sale to
25 your house, with Mr. Hogan, that they had cancelled the

1 foreclosure suit against you?

2 A. No, I did not.

3 Q. If you would be so kind as to turn to tab number 20,

4 Plaintiff's statement number -- Exhibit number 32 for

5 identification in these proceedings. Would you please look at
6 the bottom?

7 A. Yes, sir.

8 Q. Is that your signature?

9 A. Yes, it is.

10 Q. And is that your wife, Cheryl Mack's signature?

11 A. Yes, it is.

12 Q. The date of this payoff statement is January 26th, 2010,
13 in the top right-hand corner. Do you see that, sir?

14 A. Yes.

15 Q. Is that about the date that you saw this?

16 A. Yes.

17 Q. And you signed it on that date?

18 A. Yes, sir.

19 Q. And if you will please look down at the amount due, look
20 at item number 3. Do you see where they are charging
21 \$23,923.36 for escrow impound fees?

22 A. Yes, sir.

23 Q. Do you know what that was for?

24 A. No, I do not.

25 Q. And if you will look down to about the tenth item down,

1 where it says "other fees and costs", do you see that, sir?

2 A. Yes.

3 Q. And they were charging 3,712 dollars?

4 A. Yes.

5 Q. Do you recall what that was for?

6 A. No, I do not.

7 Q. But all those items were added to the principal balance
8 that you needed to pay?

9 A. Yes.

10 Q. And the total that GM required to be paid, before they
11 would release this mortgage, was one million-two hundred --

12 THE COURT: It's \$1,025,092.41.

13 Q. -- 25,092, yes, correct?

14 A. Yes, it is.

15 Q. Okay. And if you would be so kind now as to turn to tab
16 number 21. And that bears Plaintiff's Exhibit number, for
17 identification, 26 for these proceedings. Do you have that,
18 sir?

19 A. Yes, I do.

20 Q. Okay. And if you would turn to the last page of this
21 exhibit.

22 A. Yes.

23 Q. Is that your signature on this settlement statement?

24 A. Yes, it is.

25 Q. And Mrs. Mack's as well?

1 A. Yes, it is.

2 Q. And the Hogans signed this too?

3 A. Yes, sir.

4 Q. They weren't at the closing with you?

5 A. No, they weren't.

6 Q. You signed it on or about January 28th, 2010?

7 A. Yes.

8 Q. And if you would now turn to the first page, and please
9 look under "Seller" side -- it's a little hard to see, but it's
10 on the right-hand side. Do you see the right-hand side? It's
11 divided up into the buyer on the left and the seller on the
12 right?

13 A. Yes.

14 Q. Okay. And they have, under item 504, "Payoff of the first
15 mortgage loan", do you see that, sir?

16 A. What, please?

17 Q. Item number 504, "Payoff of the first mortgage loan".

18 A. Yes, sir

19 Q. And they deducted out of the funds you were to receive
20 that day, the sum of \$1,025,671.78?

21 A. Yes.

22 Q. And that was the amount that they told you you had to pay
23 to have your mortgage released, in their payoff statement that
24 was in tab number 20, wasn't it?

25 A. Yes.

1 Q. And you did pay that amount?

2 A. Yes.

3 Q. And you received out of this closing -- after paying all
4 the money that GM was demanding, and the cost of your sale, you
5 received the amount of \$63,151.47?

6 A. Yes.

7 Q. Now, if you would be so kind to turn to tab number 22,
8 which bears Plaintiff's Exhibit number 21 for identification in
9 these proceedings. Do you have that in front of you, sir?

10 A. Yes.

11 Q. And this was a letter dated January 14th, 2010, isn't it?

12 A. Yes, sir.

13 Q. Did you receive this from General Motors Acceptance
14 Corporation Mortgage?

15 A. Yes, we did.

16 Q. Had you contacted General Motors Acceptance Corporation
17 Mortgage, concerning the charge that you had on your mortgage
18 payoff statement of 3,712 dollars, to inquire as to what it
19 was?

20 A. Did I inquire about it?

21 Q. Yeah, did you ask GM why they were charging you 3,712
22 dollars?

23 A. I believe we did, yes.

24 Q. All right. And was this the answer they gave you to
25 explain why they were charging that amount of money to you?

1 A. Yes.

2 Q. And did you know that this money would go to reimburse
3 them for their attorney costs when they filed, or costs when
4 Deutsche Bank caused the mortgage foreclosure to be filed
5 against you?

6 A. No, I didn't know that.

7 Q. Even after reading this letter, you didn't understand that
8 you had to reimburse them for the foreclosure they filed
9 against you?

10 A. No.

11 Q. Would you please turn back to tab number 19? This was the
12 notice of voluntary dismissal, Plaintiff's Exhibit 5 to these
13 proceedings. Do you have that in front of you, sir? And I am
14 going to read into the record, and please tell me if I have it
15 wrong: "Plaintiff, the prevailing party, by and through its
16 undersigned counsel, voluntarily dismisses its complaint for
17 foreclosure and other relief, without prejudice, and cancelled
18 the notice of lis pendens as to the property described as
19 follows". Do you see that, sir?

20 A. Yes, I do.

21 Q. Would you be so kind now as to turn to tab number 23? And
22 it's marked as Plaintiff's Exhibit number 28 for identification
23 in these proceedings. Do you see that, sir?

24 A. Yes, sir.

25 Q. And this is a release of the mortgage that you paid GMACM

1 for -- in your closing of late January of 2010, isn't it?

2 A. Yes.

3 Q. And it was filed in the clerk's office on February 17th,
4 2010?

5 A. Yep.

6 Q. It's dated by Mortgage Electronic Registration Systems on
7 February 11th, 2010. Did you receive a copy of this?

8 A. No, I don't think so.

9 Q. Okay. Mr. Mack, was your wife, Cheryl Mack, depressed and
10 upset when General Motors did not respond to your letter of
11 October 26th, 2009?

12 A. Yes, she was, very depressed.

13 Q. Now, I know she was -- she was concerned about the
14 foreclosure before that date, wasn't she?

15 A. Yes, sir.

16 Q. And you were too?

17 A. Yes.

18 Q. Did the fact that you did not get a response to that
19 letter, did that cause a problem with Cheryl?

20 A. Yes, definitely.

21 Q. And what happened to her in November of 2009?

22 A. She -- in 2009, she went into the hospital.

23 Q. I'm sorry, what?

24 A. That's the date she went into the hospital, I believe.

25 Q. Why did she go into the hospital in November?

1 A. She was very -- she couldn't -- I don't know how to
2 explain it. She was very upset, just couldn't handle daily
3 living anymore and wanted to give up, and she just had -- she
4 had a drinking problem at the time, and we tried to get that
5 straightened out. So she was in the hospital.

6 Q. Did there come a time, in November of 2009, when she took
7 an overdose or an excessive amount of Ambien?

8 A. Yes, there -- yes, she did.

9 Q. Was that about November 9th, 2009?

10 A. Yes.

11 Q. And did she also mix that with alcohol?

12 A. Yes.

13 Q. Do you know how many Ambiens she took?

14 A. No, I have no idea.

15 Q. And forgive me, Mr. Mack, I know you may not be
16 comfortable with this; some people have described this as a
17 suicide attempt. Do you think it was?

18 A. Yes.

19 Q. You do?

20 A. Yes, sir.

21 Q. How long was she in the hospital?

22 A. For approximately a week.

23 Q. When she got out of the hospital, was she better?

24 A. Yes, a little bit; yes, she was.

25 Q. Did she continue to show signs of depression after that

1 date?

2 A. Yes, she did.

3 Q. And did she show depression in December of 2009?

4 A. Yes, she did.

5 Q. And in January of 2009?

6 A. Yes, sir.

7 Q. January of 2010, I should say?

8 A. Yes.

9 Q. You stayed in Naples, after you sold your house in late
10 January, for about another eight or nine months?

11 A. Yes, we stayed there for one year.

12 Q. Did she --

13 A. We rented the house.

14 Q. Did she continue to show signs of depression in that year
15 that you were down there, or nine months?

16 A. Yes, she did.

17 Q. And then you moved to New Jersey?

18 A. Yes.

19 Q. Why did you move to New Jersey?

20 A. Well, she was -- she told me that she knew that she had a
21 kidney problem, and well, I knew that things -- I thought
22 things might be better if we were with family and where we had
23 lived before we did move to Florida, that it might help out her
24 depression, which it didn't. And she just continued to get
25 worse because of the kidneys -- kidney problem.

1 Q. Now, she had a kidney problem before she went to the
2 hospital in November of 2009, didn't she?

3 A. Yes, she did.

4 Q. Did the problem get worse after that hospitalization?

5 A. Yes.

6 Q. And did there come to a point where she required dialysis
7 then?

8 A. Well, she -- she used dialysis.

9 Q. When did they recommend that she take dialysis?

10 A. On that date when she left the hospital, they said she
11 would have -- it would be good for her to start dialysis.

12 Q. And she did not want to do that?

13 A. No, sir.

14 Q. Had she ever taken dialysis before?

15 A. No.

16 Q. When you moved to New Jersey, did they also try to get her
17 to take dialysis?

18 A. I tried to talk her into it, but she would not have
19 anything to do with it.

20 Q. She died in October of 2013?

21 A. Yes, she did.

22 Q. Do you know what the cause of death was?

23 A. Well, her kidneys.

24 Q. And that whole time she never underwent dialysis?

25 A. No, sir.

1 Q. And do you know why?

2 A. I believe I do; I don't believe she wanted to live
3 anymore.

4 Q. At the time that you signed the contract with Mr. Hogan to
5 sell your house in Florida, did you know that General Motors
6 had dismissed the suit against you?

7 A. No, we did not.

8 Q. Did Cheryl oppose moving to New Jersey after you sold your
9 house and moved out to Florida?

10 A. She didn't want to leave Florida, no, but -- she didn't
11 want to leave Florida, and after we left Florida we had
12 problems, started to have problems as the kidneys got worse.
13 She kept saying, I want to go back home, I want to go back
14 home. And we couldn't convince her that her home was here in
15 New Jersey.

16 Q. And when she said I want to go back home, what was she
17 referring to?

18 A. Florida.

19 Q. Mr. Mack, what was your life like with Cheryl before your
20 October 26th, 2009 letter?

21 A. We didn't have any problems. I mean, we were --
22 everything was normal.

23 Q. She had some depression problems before that time, didn't
24 she?

25 A. Yes.

1 Q. And she was seeing a psychiatrist for that?

2 A. Yes, she was.

3 Q. Do you recall the name of the psychiatrist?

4 A. No, I do not -- I don't.

5 Q. Was it Dr. Lichi?

6 A. Yes, it is.

7 Q. And were you aware that in 2005 she actually tried to
8 commit suicide?

9 A. Yes.

10 Q. After she began seeing Dr. Lichi, did she -- did her mood
11 and her depression that existed in 2005, did that get better?

12 A. Yes, it did a little. It got a little better. She did a
13 little better.

14 Q. You bought your house on Egret in 2 -- did you buy it in
15 2006?

16 A. 2006?

17 Q. Yeah, that was when you got the loan with GM. Was that
18 when you bought the house?

19 A. Yes, sir.

20 Q. To the best of your memory, was it a refinancing, with GM?

21 A. Yeah.

22 Q. The fact that you bought that nice house, did that improve
23 her attitude about life?

24 A. Yes, she loved that house. She thought that we were going
25 to be there until the end, but --

1 Q. What did she like to do with the house?

2 A. She was a decorator, she liked to decorate.

3 Q. Did she do gardening?

4 A. No.

5 Q. Did you and Cheryl travel, did you enjoy traveling before
6 October of 2009?

7 A. Yes, we did.

8 Q. When was the last time you traveled before you wrote the
9 letter of October 26th, 2009?

10 A. What was it?

11 Q. When was the last time you traveled before you wrote the
12 letter of October 26th, 2009?

13 A. Approx -- I would say about a year.

14 Q. Before October of 2009, say September of 2009, was Cheryl
15 and were you physically able to travel if you wanted to?

16 A. Yes, we were.

17 Q. After her hospitalization of November of 2009, was Cheryl
18 physically able to travel?

19 A. No, we did not travel after that.

20 Q. Now, I noticed when you came in the courtroom today, you
21 were using the assistance of a walker to get to the witness
22 stand?

23 A. Yes, sir.

24 Q. And you need that now?

25 A. Yes, I do.

1 Q. When did you first require the use of a walker to help
2 you?

3 A. March of this year.

4 Q. Is that because you broke your leg?

5 A. Yes, I did.

6 Q. And you, certainly, don't attribute your broken leg, or
7 your use of the walker, to anything that went on with General
8 Motors, do you?

9 A. No, I don't.

10 Q. So would it be fair to say that you might now be impeded
11 from traveling yourself, because you've broken your leg, and
12 you have a walker?

13 A. I am impeded until I get the doctor's permission to put
14 more weight on my broken leg.

15 Q. But before March of 2014 -- was it '14 or was it '15, that
16 you broke your leg?

17 A. '15.

18 Q. Okay. Before that were you physically able, could you
19 have traveled if --

20 A. Yes, sir.

21 Q. -- Cheryl were here and she could go with you?

22 A. Yes.

23 Q. Did Cheryl's depression that came forth as a result of her
24 suicide attempt in November of 2009, did that stay with her as
25 a more significant depression than had ever existed before?

1 A. Yes, sir.

2 Q. Did she again try to commit suicide in 2011?

3 A. We were having problems, I don't remember. She was taking
4 so many pills from -- that were prescribed, and I believe she
5 took an overdose of one pill for one -- one pill, but we caught
6 up with it.

7 Q. Did your relationship with Cheryl, your personal
8 relationship with your wife, did that suffer in any way after
9 her hospitalization of November of 2009?

10 A. Yes.

11 Q. How?

12 A. She was not a happy person, she did not want to -- she
13 didn't want to do anything. She was a very good cook, she gave
14 up cooking, and so we had to -- I'm not a good cook, so we had
15 to eat out most of the time. We didn't go anywhere or do
16 anything. She was tired.

17 Q. Did there come a time when she enrolled in hospice in New
18 Jersey?

19 A. Yes, sir.

20 Q. And did she have to carry oxygen with her?

21 A. No, she never had oxy -- oxygen.

22 Q. You lived in the house in New Jersey on Amber Drive?

23 A. Amberfield Drive.

24 Q. Amberfield Drive. Did she have to have oxygen to walk
25 around the house?

1 A. Yes, she did have oxygen. Yes.

2 Q. And was she required to use that before the time she
3 passed away in October of 2013?

4 A. She was -- she was supposed to have it on, but she
5 wouldn't keep it on. It was -- she had -- towards the end it
6 was a twenty-four hour a day, seven day a week job, to take
7 care of her, make sure she had her pills. If she was having
8 problems with breathing, we would put the breathing tube on.
9 But --

10 Q. Give me a minute, I just want to go over my notes, and
11 make sure I've covered everything with you.

12 MR. GARBER: I don't have any further questions at
13 this time. Thank you very much.

14 THE COURT: Are you going to move your exhibits into
15 evidence?

16 MR. GARBER: Yes, Your Honor, I would move all those
17 exhibits.

18 THE COURT: Well, you need to identify specifically by
19 number.

20 MR. GARBER: Yes.

21 THE COURT: And I would -- just bear with me for a
22 second, okay.

23 MR. GARBER: Mr. Mack --

24 THE COURT: Hang on just a second, okay.

25 MR. GARBER: -- you'll have to answer some questions

1 from Mr. Lewis.

2 THE COURT: Yes. But before you do that, just hold
3 on. Okay.

4 Okay. You need to move your exhibits into evidence,
5 but I come back to the point that I think a document that's
6 important to you, the October 26th, 2009 letter, does not bear
7 an exhibit number. And I -- it's tab 12, and I don't see it on
8 your exhibit list. Easily fixed, but, I mean, no surprise
9 about that letter.

10 MR. GARBER: Let me look at my exhibits.

11 THE COURT: Look at your exhibit list and make sure.

12 (Pause)

13 MR. GARBER: Your Honor, looking quickly at my exhibit
14 list that I have, I don't see the October 26th letter.

15 THE COURT: All right. Mr. Lewis, can we mark this as
16 PX-43?

17 MR. LEWIS: Yes, Your Honor.

18 THE COURT: All right. And this letter is no surprise
19 to you, it's been a key letter throughout.

20 MR. LEWIS: I was expecting it, Your Honor.

21 THE COURT: Yes, okay. So we're marking what's behind
22 tab 12 as PX-43, and it's the October 26th, 2009 letter from
23 the Macks to GMAC Mortgage.
24 (October 26th, 2009 letter from Mr. Mack was hereby marked for
25 identification as Plaintiff's Exhibit 43, as of this date.)

1 THE COURT: Hang on. And one of my law clerks just
2 handed me a note, I think you have it marked, Mr. Lewis, as DX-
3 8?

4 MR. LEWIS: We have -- we have it in our binder.
5 We're looking out for Mr. Garber.

6 THE COURT: Yes. All right.

7 MR. GARBER: Thank you.

8 THE COURT: But -- I'll tell you what we'll do. Let's
9 take a short recess now. Let's take a fifteen-minute recess,
10 and then you can begin your cross-examination.

11 MR. GARBER: Your Honor, before we take the recess --

12 THE COURT: Yes, go ahead.

13 MR. LEWIS: -- I would like to approach the bench with
14 Mr. Garvey to discuss something that may affect how I do my
15 examination.

16 THE COURT: Sure, please, Come on up.

17 Just close off the recording.

18 (Recess from 11:34 a.m. until 11:38 a.m.)

19 THE COURT: -- (starts mid-sentence) on the clock in
20 the courtroom, at which point Mr. Lewis can begin his cross-
21 examination. I don't know how long that will last. At around
22 12:30 I'll ask you how much further you have to go. We'll
23 either take a lunch break then or not. Okay.

24 Anything either of you want to raise?

25 MR. LEWIS: No.

1 MR. GARBER: Nothing.

2 THE COURT: All right. So we're going to take a
3 recess until five minutes to 12. Thanks very much.

4 (Recess from 11:39 a.m. until 11:57 a.m.)

5 THE COURT: All right. Please be seated.

6 All right. Before we begin with the cross-
7 examination, we had a brief off-the-record discussion before
8 the recess, regarding stipulated facts which were included in
9 the joint pre-trial conference order.

10 One of my clerks pointed out to me when -- during the
11 recess, that I had never actually signed, so-ordered, the joint
12 pre-trial order.

13 The joint pre-trial order submitted by counsel is
14 filed as ECF docket number 8162, it was filed on February 20th,
15 2015.

16 Unless I hear to the contrary, it's my intention later
17 today to just so order it and have it entered. Just strike the
18 word "proposed", and have it entered.

19 And, obviously, the stipulated facts which are
20 contained, beginning on page 2 of the pre-trial order, they run
21 from page 2 through the top of page 6, any -- actually -- yeah,
22 2 through page 6. Any of the facts that the parties have
23 stipulated, the Court will accept them as true, and apply them
24 to any decision the Court renders.

25 Mr. Garber --

1 MR. GARBER: Yes, Your Honor. Your Honor, there was
2 an area of inquiry I forgot to ask. And rather than do a
3 redirect, I would like the Court's permission to do that.

4 THE COURT: Please go ahead.

5 RESUMED DIRECT EXAMINATION

6 BY MR. GARBER:

7 Q. Mr. Mack, when your wife was hospitalized in November of
8 2009, do you know if there was a bill for that hospitalization
9 that you were aware of?

10 A. An outstanding bill?

11 Q. No. What -- did her medical care cost anything?

12 A. Yes, it did.

13 Q. Now, you had Medicare that paid some of her bill?

14 A. Yes, sir.

15 Q. And you had your private insurance from your policeman's
16 retirement --

17 A. Yes.

18 Q. -- insurance, correct?

19 A. Yes.

20 Q. And the whole bill was paid?

21 A. Yes, it was.

22 Q. Do you recall about how much that bill was from her
23 hospitalization in November of 2009?

24 A. I think it was about 30,000 -- 30,000 dollars.

25 Q. Later on that year, while you were still in Naples, she

1 was, again, hospitalized. I think that was in October of 2010,
2 do you recall that?

3 A. Yes.

4 Q. And, again, was that paid for by Medicare and your private
5 insurance through your policeman's --

6 A. Yes.

7 Q. -- retirement?

8 A. Yes.

9 Q. And do you recall about how much that bill was?

10 A. About the same, maybe a little more.

11 Q. Okay.

12 A. 40 -- 35, 40.

13 MR. GARBER: I have no further questions. Thank you.

14 THE COURT: All right. Mr. Lewis?

15 MR. LEWIS: Your Honor, let me begin by reporting to
16 you an agreement that Mr. Garber and I have made regarding
17 exhibits.

18 THE COURT: Yes.

19 MR. LEWIS: That will save I think in the end a lot of
20 time.

21 We've agreed that each party's exhibits in the exhibit
22 books that were supplied to the Court, and were listed, will be
23 admitted. And then we won't have to go through them one-by-
24 one-by-one.

25 THE COURT: You may have a little bit of a problem

1 with me about that. Let me explain.

2 MR. LEWIS: Of course.

3 THE COURT: I don't have a problem about any exhibit
4 that has been previously marked for identification, which is
5 raised during an examination, or specifically identified in
6 colloquy, is admitted in evidence. What I always -- I don't --
7 you'll excuse my reference to it, but I don't allow exhibits to
8 simply be dumped in. I don't know whether -- so there may be
9 exhibits in the exhibit books, yours, Mr. Lewis, or Mr.
10 Garber's, that are not referred to in any testimony or anything
11 else, and I will not admit them in evidence, unless they're
12 specifically identified on the record. Okay.

13 I don't want to prolong the trial, but I don't want to
14 have to -- because anything that's in evidence, I will -- I'm
15 not going to rule from the bench during the trial. I'll go
16 back and review again. I've reviewed exhibits, but I don't
17 want to have to spend time carefully reading exhibits that
18 nobody ever refers to in the trial, because the two of you have
19 agreed they'll come into evidence.

20 I'm happy if one or both of you just identify the
21 exhibit numbers, what you're, you know, specifically going to
22 use, that's fine with me. Am I understood about this?

23 MR. LEWIS: I understand, Your Honor. Here's our
24 thinking, and this involves a second supposition --

25 THE COURT: Okay.

1 MR. LEWIS: -- that the Court may or may not concur
2 in.

3 Our second supposition is if the Court would be asking
4 for the post-trial briefing to knit all this together. Just
5 because it's a partial live record, and a partial dead record,
6 that we would then in those briefs identify specific exhibits,
7 and specific excerpts from those exhibits, that we would like
8 to rely on in the Court's rendering a decision. So the Court
9 wouldn't have to tour through everything trying to figure out
10 what counts and what doesn't count.

11 THE COURT: When we get to the end of all of the
12 evidence, let's talk about whether I believe it's necessary to
13 have you both submit post-trial briefs. I'm probably going to
14 be okay with that, but we'll cover that at the end. All right.

15 We'll put off -- I understand the stipulation you both
16 reached with respect to the admissibility of the exhibits.
17 Let's just revisit it when all the evidence is in.

18 I think what you just suggested, Mr. Lewis, would
19 probably solve the problem that I have. I just -- I hope you
20 understand that I just don't want to have to feel --

21 MR. LEWIS: Sure.

22 THE COURT: -- I've got to read every page of every
23 scrap of exhibit that nobody's ever referred to during trial,
24 because they came into evidence. Okay.

25 MR. LEWIS: We would like to relieve you of that

1 spellbinding duty, Your Honor.

2 THE COURT: Okay. All right. So let's proceed with
3 cross-examination.

4 MR. LEWIS: Your Honor, to the extent that we need it,
5 we've put one of our exhibit books on the witness stand --

6 THE COURT: Very good.

7 MR. LEWIS: -- for Mr. Mack to refer to. You have
8 one, I believe?

9 THE COURT: I do.

10 MR. LEWIS: Okay.

11 CROSS-EXAMINATION

12 BY MR. LEWIS:

13 Q. Good morning, Mr. Mack.

14 A. Good morning.

15 Q. Are you aware that Dr. Lichi repeatedly diagnosed Mrs.
16 Mack as being -- suffering from major depression from 2005,
17 when he first began seeing her, all the way through the last
18 appointment with her in 2010?

19 A. Well, it's why she was going to him.

20 Q. She was depressed in 2005, wasn't she?

21 A. Yeah, just not as bad as it became.

22 Q. Now, are you aware that Mrs. Mack's kidney problems were
23 due to the interaction of her neosupressant Prograf with her
24 kidneys?

25 A. Medications?

1 Q. Yeah.

2 A. With the -- no, I was not.

3 Q. Are you aware that she was diagnosed with acute renal
4 failure before the foreclosure process began?

5 A. I knew she was having -- yes, she started to have them
6 before that.

7 Q. And are you aware that after she took her overdose of
8 alcohol and drugs in 2009, November of 2009, she told the
9 medical providers there that she was both upset about the
10 foreclosure and about your financial situation?

11 A. Yes.

12 Q. So the foreclosure wasn't the only reason that she took
13 that overdose, was it?

14 A. I believe it was.

15 Q. That's not what she told the providers?

16 A. Provider?

17 Q. The people at the hospital, medical providers?

18 A. I was never asked anything by those people.

19 Q. You were not, but she was?

20 A. She was, yes.

21 Q. And that's what she told them, are you aware of that?

22 A. Yes.

23 Q. Okay. Now, you wanted to move back to New Jersey
24 before -- before the foreclosure began, isn't that right?

25 A. Before what?

1 Q. The foreclosure began?

2 A. We didn't -- we hadn't thought about it.

3 Q. Wasn't that a bone of contention between the two of you in
4 your marriage; you wanted to move to New Jersey to be with your
5 family, and she wanted to stay in Florida in her dream house?

6 A. No, that's -- we would have stayed in Florida had we not
7 been involved in this going to bank and then back and forth
8 with Deutsche and GMAC. We would have stayed there. But as
9 things developed, got worse, we had to do -- had to do it.

10 Q. You might have stayed in Florida, but you couldn't have
11 stayed in that house, could you, on Egret.

12 A. If they didn't double my mortgage payment, and -- we could
13 have, yes.

14 Q. Didn't they waive that requirement at some point?

15 A. Not that I know of. It was dropped the day before we made
16 settlement, nobody told us anything about it.

17 Q. Are the exhibit books that Mr. Garber was using still up
18 there?

19 A. Yes, sir.

20 Q. Could you take volume 1 please?

21 A. Yes, I have it.

22 Q. And look at Exhibit 4 -- 14, I'm sorry?

23 THE COURT: Are you saying tab 14?

24 MR. LEWIS: Tab 14. I'll get there, Your Honor.

25 THE COURT: No, I just want to be sure I --

1 MR. LEWIS: No, tab 14, Exhibit 41.

2 Q. Do you remember testifying about this document, just
3 today?

4 A. Document number 40?

5 Q. No, tab 14, Exhibit 41.

6 MR. LEWIS: May I, Your Honor.

7 THE COURT: Yes, sure. Go ahead.

8 Q. So, Mr. Mack, are you now at tab 14, Exhibit 41?

9 A. Yes.

10 Q. And you remember testifying about that earlier today?

11 A. Yes, sir.

12 Q. Okay. Can I get you to read the very first paragraph of
13 this letter?

14 A. "In conjunction with your request for loan
15 modification" --

16 THE COURT: Why don't you read it, and ask him to
17 follow along with you.

18 MR. LEWIS: Sure, okay.

19 THE COURT: We don't have to put Mr. Mack to that.

20 MR. LEWIS: Okay.

21 THE COURT: So just listen, he's going to read it, and
22 you follow along, okay.

23 Q. Let me read this to you. The first paragraph says, "In
24 conjunction with your request for loan modification" and that
25 would be your HAMP request, right?

1 A. Yes.

2 Q. "An escrow account or payment of tax and insurance was
3 established as a requirement of the qualification system," do
4 you see that?

5 THE COURT: Qualification process.

6 MR. LEWIS: Qualification process.

7 A. Yes.

8 Q. And that tells you that the escrow established -- was
9 established because you applied for a loan modification, is
10 that right?

11 A. Yes.

12 Q. Okay. Not just out of the clear blue?

13 THE COURT: I have your point, Mr. Lewis. Go ahead
14 and read the next sentence.

15 Q. And the second sentence says, "As the loan did not qualify
16 for the requested modification, escrow for the above-referenced
17 items has been waived." Do you see that sentence?

18 A. Yes.

19 Q. Does that remind you that contrary to your testimony
20 earlier this morning, GMAC did, in fact, make a decision about
21 your loan modification request, and denied it?

22 A. And denied it, yes.

23 Q. Yes. But it did respond, it did make a decision?

24 A. Right.

25 Q. Do you recall testifying earlier this morning that it

1 never made a decision, do you recall that testimony?

2 A. That they -- they never gave me any --

3 Q. Never made a decision on your loan modification request?

4 A. I didn't know anything about them dropping -- dropping
5 payment or not granting it, I didn't know that.

6 Q. This indicates that they denied it, doesn't it?

7 A. They denied it, yes.

8 Q. That's what this indicates.

9 A. Yes.

10 Q. So you knew, at least by December 9th, or December 15th or
11 so of 2009, that they had denied it, isn't that right?

12 A. I don't remember reading anything about them denying it,
13 or that.

14 Q. But you read this letter, you told us this morning?

15 A. I read all the letters, I think.

16 Q. Okay. And this letter says they denied it, is that right?

17 A. Yes.

18 Q. Okay. Now, isn't it true that regardless of whether the
19 foreclosure happened, you couldn't keep that house on Egret,
20 could you, because you couldn't afford it, is that true?

21 A. We could have afforded it for a few more years.

22 Q. I'd ask you to turn to tab 9 of this same booklet?

23 A. 9?

24 Q. Yes. This is another document you testified about this
25 morning. Are you there?

1 A. Yes.

2 Q. Okay. And if you look at the second paragraph, the big
3 paragraph, the first paragraph, you explain why you applied for
4 the modification, right?

5 A. Yes, sir.

6 Q. And then you say in the next paragraph, "We have tried to
7 live with the payment -- this payment amount, but we've
8 exhausted all of our financial resources. The money that we
9 have gone through was all that we saved from years of working,
10 so that we could have something for our retirement years.

11 Well, unfortunately, those years are upon us and we have
12 nothing left." Do you see that?

13 A. Yes, sir.

14 Q. Is it still your testimony you could have afforded to keep
15 this house, having said this to GMAC in August of 2009?

16 A. Well, we kept it for -- we were planning on staying there
17 until -- it was exhausted -- we don't know what's going to
18 happen.

19 Q. Doesn't this say your savings were exhausted?

20 A. It says that, but we had enough money to pay the bills
21 for, like I said, a few more years.

22 Q. So you misled GMAC in this letter, isn't that right? Is
23 that what you're telling me?

24 A. Well, if they took it that way, I guess I did.

25 Q. Did you intend them not to take what you said at face

1 value? You're saying here that your savings are gone.

2 A. I'm just saying we had enough money to stay there for a
3 while.

4 Q. Okay. Your gross income in those days is about 6,700
5 dollars, right?

6 A. Yes.

7 Q. And you were paying 5,900 dollars a month on the mortgage?

8 A. Yes.

9 Q. That left you about 800 dollars a month for all your other
10 living expenses, is that right?

11 A. Yes.

12 Q. That wasn't nearly enough, was it? Taxes, insurance --

13 A. Not what we earned.

14 Q. -- food, clothing, recreation, repairs, maintenance, that
15 house must have been pretty expensive to maintain, was it not?
16 The swimming pool and a dock?

17 A. But we were -- we were paying bills, we had the money, we
18 were paying.

19 Q. Could I get you to look at the second volume of Mr.
20 Garber's booklets, please? And look at the document under tab
21 17. Are you there?

22 A. Yes.

23 Q. And this is the contract that you entered into for the
24 sale of your house in December of 2009, right?

25 A. Yes, sir.

1 Q. Okay. If I can get you to look at -- I have to do this
2 the hard way, I'm afraid -- the eighth page of this document.

3 THE COURT: Perhaps you could just go up and help
4 him --

5 MR. LEWIS: I'd be happy to do that, Your Honor.
6 Sure.

7 THE COURT: -- because it's a long document, and
8 sometimes hard to find pages.

9 And then just tell us what's at the top of that page,
10 so that I'm at the same place you are.

11 Q. This page is entitled "Number 2 Inspections," do you see
12 that?

13 A. Yes, I do.

14 Q. And do you see in 2(a) that the buyer has the right to
15 inspect the property for defects and repairs that might be
16 necessary?

17 A. Yes.

18 Q. Did the buyer do that?

19 A. They had a company come around and inspect the house.

20 Q. And did they find anything wrong?

21 A. A couple of things they found wrong.

22 Q. And did they ask you to make adjustments to the sale price
23 as a consequence?

24 A. Yes.

25 Q. And you made those adjustments?

1 A. Yes.

2 Q. What would have happened if you had refused to make those
3 adjustments?

4 A. I have no idea, they maybe would have said --

5 THE COURT: You don't have to speculate.

6 Q. But as your understanding of this contract, that you could
7 have backed out of the contract, right?

8 A. If he said he didn't want to buy the house because I
9 didn't do the work that was needed.

10 Q. He could have backed out of the contract, right?

11 A. Yes.

12 Q. Okay. I'm going to hand you what will now be marked as
13 Defendant's Exhibit X.

14 MR. LEWIS: Your Honor, this is the document that we
15 got last week. If I may?

16 THE COURT: Sure, please.

17 MR. LEWIS: Giving you a tab and mark this for the
18 Court.

19 THE COURT: Thank you.

20 Q. Do you recognize this document?

21 A. No, I don't.

22 Q. Mr. Garber had you look at a copy of it earlier today, do
23 you recall that?

24 A. No, I don't remember that.

25 THE COURT: It's behind tab 19, it's PX-5

1 Q. Could you look behind tab 19. We were -- this is Mr.
2 Garber's tab 19, are you there?

3 A. Where is it at?

4 Q. Let me --

5 (Pause)

6 Q. This is tab 19 of Mr. Garber's volume II booklet, and it's
7 Exhibit 5, Plaintiff's Exhibit 5. Do you remember seeing that
8 earlier today? Mr. Garber asked if you'd ever seen it before,
9 and you said no?

10 A. I don't believe I had seen it before.

11 Q. Now, if you look at Exhibit X that I just handed you, the
12 one-page document?

13 A. Yes.

14 Q. This is the same document, isn't it, notice of voluntary
15 dismissal?

16 A. Yes.

17 Q. If you look at the top, the very top, do you see the
18 legend across the top that begins December 11th? Do you see
19 that? Would you like some help?

20 A. Is the date December 11th?

21 Q. You see that?

22 A. Oh, okay, yes.

23 Q. So do you see that legend at the top begins December 11th,
24 '09?

25 A. Yes, sir.

1 Q. And it says 305P, as in 3:05 p.m., correct?

2 A. Yes.

3 Q. And then it says Sherry Mack, you see that?

4 A. Yes, sir.

5 Q. Mr. Garber had represented to me last week that Mrs. Mack
6 faxed this document to him on that day, December 11th, 2009.

7 That means that you and Mrs. Mack had this document at least by
8 December 11th, 2009, doesn't it?

9 A. Probably, yes.

10 Q. Okay. And do you think if you got this document, and Mrs.
11 Mack opened it, she wouldn't share it with you?

12 A. It doesn't say anything about the -- it being dropped in
13 this.

14 Q. It says notice of voluntary dismissal, doesn't it?

15 A. I --

16 Q. So it says, "Plaintiff, the prevailing party," in the very
17 first paragraph, "by and through its undersigned counsel,
18 voluntarily dismisses its complaint for foreclosure and other
19 relief." Do you see that?

20 A. Yes, sir.

21 Q. Okay. So you knew -- you and Mrs. Mack knew, at least by
22 December 11th of 2009, if not sooner, that Deutsche Bank had
23 dismissed the foreclosure action, isn't that correct?

24 A. We did not know until after we made settlement that
25 anything was dropped. That's all I can tell you. All these

1 forms and everything, we knew nothing about. And even if it
2 was dropped at that time, there was already a -- we were
3 already into selling the house and we couldn't back out of it
4 now, at that time.

5 Q. You could have told Mr. Hogan that you weren't going to
6 agree to the repairs he wanted and seen if he backed out, could
7 you not?

8 A. There was only two or three things that had to be taken
9 care of, and it was not a big thing.

10 Q. I understand that. But you could have told Mr. Hogan you
11 were not going to make those repairs and seen what he'd done.
12 Because if he'd backed out of the contract, you could have put
13 the house on the market again, is that right?

14 A. We could have, I guess, yes.

15 Q. Okay.

16 MR. LEWIS: Your Honor, I don't have too much more.

17 THE COURT: Fine. We'll let you finish up then.

18 MR. LEWIS: Thank you.

19 BY MR. LEWIS:

20 Q. Now, Mr. Mack, the big exhibit book, the binder, would you
21 pick that up, please, and turn to the tab O. May I help you?

22 A. O?

23 Q. Are you there at tab O?

24 A. Yes, sir.

25 Q. Okay. And it says at the top, GMAC mortgage account

1 statement, do you see that?

2 A. Yes.

3 Q. Do you remember this document?

4 A. I can't say that I do.

5 Q. Do you remember testifying about it? Do you recall I took
6 your deposition in December of last year, the same day I took
7 Mrs. DeMore's deposition at your house?

8 A. No, I don't. He probably got it there, but I don't -- I
9 mean, there's so many documents, and so much paperwork --

10 Q. Okay.

11 A. -- I can't remember all this.

12 Q. I'll come around to trying to help you remember it. But
13 do you remember I took your deposition that day?

14 A. Yes.

15 Q. Okay. And do you remember that in the course of the
16 deposition Mrs. DeMore volunteered that she had -- that there
17 was a copy of the monthly mortgage statement in your house, do
18 you recall that?

19 A. Yes.

20 Q. Okay. And you recall she went upstairs and got it?

21 A. Yes.

22 Q. And brought it down. And I put it in front of you and
23 asked you if this was the mortgage statement that you got from
24 GMACM, do you recall that?

25 A. I think so, yes.

1 Q. And this is the form and the statement you got from them
2 every month, right?

3 A. Yes.

4 Q. Okay. And then I asked you to look at the back of this
5 statement, which is the second page of this exhibit. And I
6 asked you to look at the box entitled account information or
7 questions, do you see that box about six-tenths of the way
8 down? Do you see that box?

9 A. Yes.

10 Q. Okay. And do you see a specific address for general
11 inquiries?

12 A. Yes.

13 Q. And would you read that address, please? Let me read it
14 for you, and you just verify that's what it says.

15 A. There's a line going through the --

16 Q. Okay.

17 A. It's Water -- Waterloo, Iowa.

18 Q. Okay. So general inquiry to GMAC Mortgage, Attention
19 Customer Care, PO Box 4622, Waterloo, Iowa 50704-4622. Is that
20 what it says?

21 A. Yes.

22 Q. Okay. And that's for general inquiries, right?

23 A. Yes, sir.

24 Q. And do you see there's another box below that that says
25 "Qualified written request." Do you see that?

1 A. Yes.

2 Q. And do you see that it instructs you to send qualified
3 written requests to a different address?

4 A. Yes, sir.

5 Q. And that address is GMAC Mortgage, Attention Customer
6 Care, PO Box 1330, Waterloo, Iowa 50704-1330. Is that correct?

7 A. Yes, sir.

8 Q. And every mortgage statement you got had this information
9 on it? Is that right?

10 A. Yes.

11 Q. Okay. But when you sent the October 26th letter, you
12 didn't send it to that address, did you?

13 A. No.

14 Q. You sent it to the address for general inquiries, is that
15 correct?

16 A. That's correct.

17 Q. Okay.

18 MR. LEWIS: I think I have nothing further, Your
19 Honor.

20 THE COURT: Okay. Mr. Garber, do you have any
21 redirect?

22 MR. GARBER: Briefly, Your Honor.

23 THE COURT: Okay.

24 REDIRECT EXAMINATION

25 BY MR. GARBER:

1 Q. Mr. Mack, you were asked some questions about repairs to
2 the house that you had to do, can you briefly recall what you
3 had to do for the sale to go through to Mr. Hogan?

4 A. There was a piece of concrete missing out of the bulkhead
5 in the back of the house that had to be fixed, because it
6 belonged to the town, and they said that we had to repair it.

7 Q. And how much was that?

8 A. I don't even think it was repaired before we left. I
9 don't know. We agreed to pay for it.

10 Q. Anything else?

11 A. There was a problem with the deck on the back of the house
12 where water was accumulating. And there was damage to the wood
13 underneath. And it had to be -- that had to be repaired.

14 Q. How much was that?

15 A. Like I said, I believe we got an estimate, but it was not
16 repaired. I don't remember how much it was, it was not much.

17 Q. Was it your understanding that if you didn't make these
18 repairs that Mr. Hogan could either walk from the contract, get
19 out of it, or he could still go ahead with the contract at his
20 election?

21 A. He wanted -- no, we had the contract, I agreed to either
22 pay for it or have it fixed. And the man wanted the house, it
23 was a cash -- it was a cash deal.

24 Q. Now, Mr. Lewis just asked you a minute ago did if you know
25 that these addresses were on each and every mortgage statement

1 that you got from GM, did you look at each and every mortgage
2 statement to see what addresses they had?

3 A. No, I did not.

4 Q. But you know this mortgage statement has it on it, the one
5 that he showed you, right?

6 A. Yes.

7 Q. Okay. Are you able to testify about any other ones?

8 A. No.

9 Q. Okay.

10 MR. GARBER: I have no further questions.

11 THE COURT: Mr. Lewis?

12 MR. LEWIS: Your Honor, I forgot one very small
13 area --

14 THE COURT: Okay.

15 MR. LEWIS: -- of material, it will only take a minute
16 or two.

17 RECROSS-EXAMINATION

18 BY MR. LEWIS:

19 Q. Mr. Mack, you and Mrs. Mack went on a long trip to New
20 Zealand, is that right?

21 A. Yes.

22 Q. And do you recall when that was?

23 A. What year, I --

24 Q. Yeah.

25 A. Two or three years before we started having these

1 problems, issues.

2 Q. Does the year 2000 sound right, right after your
3 respective parents had died?

4 A. Yes.

5 Q. Okay. So that was in 2000. Have you taken any other
6 major trips like that ever since?

7 A. No, that was the last one, we went to Australia and New
8 Zealand.

9 Q. Okay. So you stopped traveling after 2000?

10 A. Yes.

11 MR. LEWIS: No more questions, Your Honor.

12 THE COURT: All right. Mr. Garber, do you have
13 anything else?

14 MR. GARBER: No further questions, Your Honor.

15 THE COURT: All right, you're excused, Mr. Mack.

16 THE WITNESS: Okay. So --

17 THE COURT: And we'll take our lunch recess until 2
18 o'clock, okay.

19 MR. GARBER: Yes, Your Honor.

20 THE COURT: All right. Thanks very much.

21 MR. LEWIS: Thank you, Your Honor.

22 (Recess from 12:40 p.m. until 2:02 p.m.)

23 THE COURT: Please be seated.

24 All right. Mr. Garber, are you ready to call your
25 next witness?

1 MR. GARBER: Yes, Your Honor, I am.

2 THE COURT: Okay.

3 MR. GARBER: Your Honor, I would like to call to the
4 stand, Jewel DeMore.

5 THE COURT: All right. Please come on up to the
6 witness stand. If you would raise your right hand and be
7 sworn.

8 (Witness sworn)

9 THE COURT: All right. Please have a seat. There
10 should be cups there if you want water.

11 THE WITNESS: Oh, okay.

12 THE COURT: Okay. All right, go ahead, Mr. Garber.

13 DIRECT EXAMINATION

14 BY MR. GARBER:

15 Q. Ms. DeMore, would you please tell the Court your full
16 name?

17 A. Jewel D. DeMore.

18 Q. And where do you live Ms. DeMore?

19 A. Delran, New Jersey.

20 Q. How long have you lived there?

21 A. In Delran about twenty-two years. In my current place
22 four years.

23 Q. What sort of educational background do you have?

24 A. I have a bachelor's degree from Temple University.

25 Q. In what?

- 1 A. Business education.
- 2 Q. Have you ever taught that?
- 3 A. Yes.
- 4 Q. What sort of work experience do you have?
- 5 A. I taught at Willingboro High School for thirty-four years.
- 6 Q. How old are you?
- 7 A. Sixty-seven.
- 8 Q. Are you now retired?
- 9 A. Yes, I am.
- 10 Q. You are the sister of Cheryl Mack?
- 11 A. Yes, I am.
- 12 Q. Have you been close with Ms. Mack for a number of years?
- 13 A. Yes, very close.
- 14 Q. Did she die on October 9th of 2013?
- 15 A. Yes, she did.
- 16 Q. Okay. She moved to Florida sometime in the early 2001
- 17 time frame, didn't she?
- 18 A. Yes.
- 19 Q. And you were in New Jersey at that time?
- 20 A. Correct.
- 21 Q. Did you maintain close contact with her?
- 22 A. Yes. And visited a number of times. And spoke to her at
- 23 least weekly.
- 24 Q. You came down to Florida?
- 25 A. Oh, many times, yes.

1 Q. Did you ever see their house on Egret Avenue?

2 A. Definitely.

3 Q. And did she ever come to New Jersey?

4 A. When her step-son was in an accident, she spent some time
5 up here, yes. When Barry had gone back -- when Mr. Mack had
6 gone back to Florida after being up here, she came up to visit
7 him and stay with me.

8 Q. Do you recall when that was?

9 A. I'm not actually positive, I'd say maybe 2002, 2003.

10 Q. Okay. Can you -- I'm going to pick a date --

11 A. Okay.

12 Q. -- because it's relevant to these proceedings. And that
13 is October 26th, 2009, can you tell me what the state of her
14 health was in the years before October 26th, 2009?

15 A. Well, she had had liver problems, had a liver transplant.
16 She had some alcohol abuse, and went through some depressions.
17 But she seemed to be getting things back on track in the last
18 few years there.

19 Q. Did she ever talk to you about her depression that existed
20 before October 26th of 2009?

21 A. Yeah. It was just a general type of depression. It
22 was -- you know, she was drinking and nobody wanted her to
23 drink. And she was just overall depressed.

24 Q. Her medical records reveal that she was doing some
25 drinking after the liver transplant. Did she ever tell you

1 that she had been told not to drink --

2 A. Yes.

3 Q. -- after the liver transplant?

4 A. Yes.

5 Q. And she continued to do that?

6 A. Yes.

7 Q. Do you know about how much she drank a day after the liver
8 transplant?

9 A. Well, right after the liver transplant, for maybe six
10 months, she didn't drink at all. And then it was this sort of
11 a gradual thing that she would have maybe a couple glasses of
12 wine a day. And then a few more after that.

13 Q. One of the causes of death listed on her death certificate
14 was renal insufficiency?

15 A. Yes.

16 Q. Do you know anything about -- did she ever tell you about
17 any problems she was having with her kidneys before October
18 26th?

19 A. Well, yeah. The --

20 THE COURT: You have to -- just let Mr. Garber finish
21 his question. I want to be sure --

22 THE WITNESS: Oh, I'm sorry.

23 THE COURT: No, that's all right. You know what he's
24 asking, and you starting to answer before he asks -- finished.
25 We have to get a clear record. We don't have a stenographer.

1 We have a voice recording that's made and a transcript can be
2 made from that. So just pause a little bit, okay?

3 THE WITNESS: Okay.

4 THE COURT: Go ahead, Mr. Garber.

5 Q. So did she ever discuss with you the state of her kidneys
6 before the date of October 26th, 2009?

7 A. Yes, from the anti-rejection medication she was taking
8 that had an adverse effect on her kidneys, so they were going
9 down in function. Her numbers were not as good as they were
10 before the transplant.

11 Q. Do you know what those numbers were?

12 A. The -- no. I'm sorry; I don't.

13 Q. Now, she had a problem in November of 2009. Were you
14 aware that she was hospitalized?

15 A. Yes.

16 Q. Did she ever talk to you about that?

17 A. Yes, she did.

18 Q. And do you know why she was hospitalized?

19 A. Yes, because she tried to commit suicide.

20 Q. Okay, do you know how she tried to commit suicide?

21 A. She took pills and drank -- pills and alcohol.

22 Q. Did she ever tell you how many pills?

23 A. No. She said she took a lot of pills.

24 Q. Do you know what kind of pills?

25 A. I think it was the Ambien.

1 Q. That's the sleeping medication?

2 A. Yes.

3 Q. Okay. Do you know which date that occurred in November of
4 2009?

5 A. It was either the 9th or the 10th of November. I'm not
6 sure which.

7 Q. And how did it come to be that she was hospitalized after
8 she took those pills?

9 A. You know, I'm not really sure. I don't know.

10 Q. Did she take the pills at home?

11 A. Yes.

12 Q. And did she call you while she was in the hospital?

13 A. I called her while she was in the hospital.

14 Q. Several times?

15 A. A few times. I'd say two times.

16 Q. Did you come down to see her?

17 A. I did not. She didn't want me to come down.

18 Q. Did she tell you of the problems she was having with the
19 foreclosure on their house?

20 A. Oh, definitely.

21 MR. LEWIS: Your Honor, this is hearsay.

22 THE COURT: Sustained.

23 Q. Did --

24 MR. GARBER: Your Honor, I am trying to ascertain the
25 state of mind of this person and it's not for the truth of the

1 matter. And if it's not for the truth of the matter, I would
2 submit to the Court any state of mind that she may have
3 exhibited to her sister would not be hearsay, and I would ask
4 that I'd be granted the Court's indulgence to ask about the
5 state of mind.

6 THE COURT: Mr. Lewis?

7 MR. LEWIS: Your Honor, there is an exception for
8 present state of mind under 803. That question was not about
9 the present state of mind. That was about the foreclosure.
10 And I would add, Your Honor, my understanding of the rule, and
11 I don't pretend to be a treatise writer, is that you can ask
12 about the state of mind, but you can't ask about the cause.
13 Same thing with the present --

14 THE COURT: Just give me a minute, okay?

15 MR. LEWIS: Yeah.

16 (Pause)

17 THE COURT: Mr. Garber, Rule 803(3), provides "A
18 statement of the declarant's then-existing state of mind (such
19 as motive, intent, or plan) or emotional, sensory, or physical
20 condition (such as mental feeling, pain, or bodily health), but
21 not including a statement of memory or belief to prove the fact
22 remembered or believed unless it relates to the validity or
23 terms of the declarant's will." So those are excluded from the
24 hearsay rule, that statement of the then-existing state of
25 mind. So the declarant you're asking about is Mrs. Mack.

1 MR. GARBER: Yes, Your Honor.

2 THE COURT: And so I'm going -- I would permit you to
3 inquire specifically about Mrs. Mack's statements of then-
4 existing state of mind.

5 BY MR. GARBER:

6 Q. Ms. DeMore, did your sister, Ms. Mack, explain to you what
7 her state of mind was in her conversations with you in November
8 of 2009?

9 A. She was extremely depressed. She didn't feel that she had
10 much to live for. She said, I, you know -- I don't know what's
11 going to happen.

12 Q. And you found out from telephone conversations in November
13 of 2009?

14 A. Yes, and thereafter. I mean, I spoke with her, basically,
15 weekly and she was always depressed.

16 Q. Did you have conversations with her on the telephone
17 before October 26th of 2009?

18 A. Yes.

19 Q. And did she appear to be depressed at that time?

20 A. At that point, she was worried.

21 Q. Did you find there to be a difference in talking to her
22 from her state of mind before October 26th, 2009 and after that
23 date?

24 MR. LEWIS: Your Honor, that's a leading question.

25 THE COURT: Sustained.

1 Q. What did you find to be the difference in her state of
2 mind before that date and after that date?

3 MR. LEWIS: Your Honor, it assumes facts not in
4 evidence.

5 THE COURT: Overruled.

6 Go ahead, you can answer the question.

7 THE WITNESS: I can?

8 THE COURT: Yes.

9 THE WITNESS: Okay.

10 A. As I said, before that time, she was worried, but not
11 extremely depressed, because she felt that things were going to
12 get better. After that time, she felt fatalistic, that things
13 were not getting better.

14 Q. That was in November of 2009, right?

15 A. Yes.

16 Q. And how about after that, say, December of 2009? Were you
17 talking with her then?

18 A. Yes.

19 Q. And what was her mood after that, in December?

20 A. Still very depressed.

21 Q. Now, she sold her house in Naples in late January of 2010.
22 Were you in communication with her in that time, too?

23 A. Yes.

24 Q. And they stayed in Naples until October of 2011, I
25 believe. Were you in contact with her in that time?

1 A. Yes, I was.

2 Q. How did you find her state of mind to be from the period
3 of time of December onward until she moved to New Jersey?

4 A. Very depressed. Even after she moved -- she moved to New
5 Jersey -- she was very depressed. And that she loved Naples;
6 didn't want to leave, but felt that there was no other thing --
7 no other way to get out of their situation.

8 Q. As a matter of fact at that time, you had a house that you
9 wanted to sell, didn't you?

10 A. That's correct.

11 Q. And did Mr. Mack and Mrs. Mack want to buy your house?

12 A. Yes, yes, they did decide that they would like to buy my
13 house.

14 Q. Did they buy it?

15 A. Yes, they did.

16 Q. Do you recall when that was?

17 A. That was in November of 2010.

18 Q. And did they --

19 A. Actually October 30th of 2010.

20 Q. Did they then move to New Jersey?

21 A. Yes, they did. They did not move to New Jersey until
22 January of 2011, when their lease was up.

23 THE COURT: Can you just tell me, when did they buy
24 the house from you? I just missed it.

25 THE WITNESS: October 30th of 2010.

1 THE COURT: Okay. Thank you.

2 Q. When they moved back to New Jersey, did you then see Mr.
3 and Mrs. Mack on a continuing and frequent basis?

4 A. Yes, very frequent.

5 Q. How often?

6 A. At least two, three times a week.

7 Q. Did there come to be a time when Mrs. Mack needed to have
8 assistance or care?

9 A. Yes.

10 Q. Did you ever help out and try to provide some assistance
11 and care for her?

12 A. Oh, very much so, yes.

13 Q. What --

14 A. I was there a lot.

15 Q. What type of assistance and care did you provide for her?

16 A. Well, I helped her with her medications. I stayed with
17 her when Mr. Mack had to go out. Moral support. That's
18 basically it. Well, I -- I cooked for them, because she -- she
19 didn't any cooking or cleaning. They did have a cleaning lady.

20 THE COURT: Was your sister older or younger than you?

21 THE WITNESS: Younger.

22 Q. What year were you born in?

23 A. I?

24 Q. Yeah.

25 A. 1947.

1 Q. And what year was she born in?

2 A. 1951.

3 Q. Did her -- when did she die?

4 A. October 25th, 2013.

5 Q. Did you ever see from the time that she moved back to New
6 Jersey in 2010 until she passed away, did you ever see that
7 this depression ever lifted from her?

8 A. She might have a couple of days where, you know, things
9 would be okay; then she would just fall back into the
10 depression.

11 Q. Do you know if she ever took dialysis while she was in New
12 Jersey?

13 A. She did not.

14 Q. Did there come to be a time when she was enrolled in
15 hospice?

16 A. Yes.

17 Q. Do you know when that was?

18 A. I think that was -- I think she started that in January of
19 2013.

20 Q. Okay, and continued with that until she passed away?

21 A. Yes.

22 Q. Do you know what a qualified written request is?

23 A. Not until you mentioned it yesterday.

24 Q. Do you have any reason to believe that Mrs. Mack knew what
25 a qualified written request was?

1 A. I would not have any reason to believe that, no.

2 Q. And did you have any reason to believe that Mr. Mack, in
3 October of 2009, knew was a qualified written request was?

4 A. No.

5 Q. Do you know Mr. Mack very well?

6 A. Yes.

7 Q. Have you been in frequent and continued contact with him
8 over the marriage that he had with Mrs. Mack -- Cheryl Mack?

9 A. Yes, yes, I have.

10 Q. Do you think that his attitude or his health changed after
11 October of 2009?

12 A. Well, I did not speak to him on the phone. I spoke to my
13 sister most of the time, so I can't really say, until they came
14 up to New Jersey, about his attitude and state of mind.

15 MR. LEWIS: Your Honor, that question called for an
16 opinion.

17 MR. GARBER: Calls for what?

18 MR. LEWIS: An opinion.

19 MR. GARBER: Well, as to the mental state of the
20 person.

21 THE COURT: Objection sustained.

22 Q. Do you have any knowledge yourself of a letter that was
23 dated October 26th, 2009 that Mr. and Mrs. Mack sent to General
24 Motors Acceptance Corporation Mortgage?

25 A. My sister told me about it.

1 Q. And that's the only knowledge you have?

2 A. Yes.

3 Q. Okay. When did she tell you about it?

4 A. She -- actually she told me she was going to write a
5 letter, and then she told me after she wrote it that they wrote
6 it and sent it.

7 Q. Did she seem to you to be concerned that she didn't get a
8 response?

9 MR. LEWIS: Your Honor?

10 THE COURT: Sustained.

11 MR. LEWIS: Thank you.

12 Q. Ms. DeMore, I have no further questions; thank you.

13 A. You're welcome.

14 THE COURT: Cross-examination, Mr. Lewis?

15 MR. LEWIS: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. LEWIS:

18 Q. Ms. DeMore, are you aware that -- are you familiar with a
19 Dr. Lichi?

20 A. Yes, I am.

21 Q. And he was her psychiatrist, Mrs. Mack's, right?

22 A. Yes.

23 Q. From about 2005 on?

24 A. Um-hum.

25 Q. And are you aware that he diagnosed her from the first to

1 the last as having major depression?

2 A. Yes. I was actually the one to take her to Dr. Lichi.

3 Q. Okay.

4 A. And, yes, she did. I think --

5 THE COURT: I think you've answered the question.
6 Wait for the next question.

7 MR. LEWIS: Thank you, Your Honor.

8 Q. Incidentally, 1947 was an excellent year for births.

9 A. Oh, yours too?

10 Q. Happens to be mine, yes.

11 THE COURT: You're both youngsters.

12 MR. LEWIS: Pardon me? There may be those who
13 disagree that it was an excellent year for births, because of
14 me, but who knows.

15 THE COURT: No, I -- my comment was you're both
16 youngsters.

17 MR. LEWIS: Yes.

18 THE WITNESS: Thank you.

19 Q. In your testimony this morning, you said she was concerned
20 that things weren't getting better. What things?

21 A. In regard to the foreclosure or regard to her health?

22 Q. I don't know. It was your testimony. You said she was
23 concerned that things weren't getting better. That was your
24 phrase. So my question is, what thing weren't getting better?

25 A. I -- you know, I -- it's out of context. I don't know

1 what the question was before that, what I was answering to.

2 Q. Mr. Garber asked you about her apparent state of mind.

3 A. Okay.

4 Q. And you said that she was concerned that things weren't
5 getting better. And then my question is, what things?

6 A. Okay, if I understand correctly, I think it is that, you
7 know, nothing was happening as far as being able to stay in
8 their house, which is what she wanted tremendously, to be able
9 to stay in her house, and that -- you know, she was still
10 depressed when they were in the rental house.

11 Q. Were you aware that she couldn't afford to stay in that
12 house no matter what?

13 A. I, you know -- when Mr. Mack was talking this morning, he
14 was talking about their savings. There's a difference between
15 their savings and their investments. And they did have a lot
16 of investments that they could still use. I know that because
17 I do a lot with their books. I keep Mr. Mack's books now.

18 Q. Okay. And you're not aware that they had decided they
19 couldn't afford to stay in that house?

20 A. I knew they were having problems once the mortgage payment
21 went up to 12,000 dollars.

22 Q. And that went back down, didn't it?

23 A. That, I don't --

24 Q. Okay.

25 A. -- I was not aware of.

1 Q. Ms. DeMore, on the counter up there is a great big binder
2 like this.

3 A. Um-hum.

4 Q. Could I get you to turn to Exhibit O?

5 A. O?

6 Q. Yeah.

7 A. Okay. My goodness, okay. Yes, the refinancing or
8 purchasing a new home?

9 Q. No.

10 MR. LEWIS: May I, Your Honor?

11 THE COURT: Yeah.

12 A. Wait a minute. I turned two pages here. This one?

13 Q. This is it. These two pages.

14 A. Okay.

15 Q. And you see that's a document captioned "GMAC Mortgage
16 account statement"?

17 A. Yes.

18 Q. Do you recognize that document?

19 A. Actually, no, but --

20 THE COURT: You've answered the question.

21 THE WITNESS: Okay.

22 Q. Do you remember at Mr. Mack's deposition last December
23 telling me that there -- you thought they had a mortgage
24 statement --

25 A. Yes.

1 Q. -- in the house?

2 A. Yes.

3 Q. Okay, and you retrieved that for me, right?

4 A. I did.

5 Q. Is this that document, do you know?

6 A. I would imagine so.

7 Q. Okay.

8 A. I remember getting it. I don't remember reading it.

9 Q. Sure. How did you know that they had a mortgage
10 statement?

11 A. Because my sister kept very -- very good files. And I
12 knew that there was a file for GMAC. So I decided to go up and
13 look in that file to see if I could find the mortgage
14 statement.

15 Q. And this is the only one you found?

16 A. Yes.

17 Q. Okay. So you weren't involved in paying their mortgages
18 each month?

19 A. No.

20 Q. Okay.

21 MR. LEWIS: All right. I have no further questions,
22 Your Honor, thank you.

23 THE COURT: All right. Mr. Garber, redirect?

24 MR. GARBER: No further direct, Your Honor.

25 THE COURT: All right, you're excused. Thank you very

1 much, Ms. DeMore.

2 All right. Mr. Garber, do you have any other
3 witnesses you wish to call?

4 MR. GARBER: No, I have no other witnesses, Your
5 Honor.

6 I am prepared to go through my exhibits, not all of
7 which have been referenced in testimony here, and explain to
8 the Court the excerpts that I think should warrant attention.
9 Mr. Lewis has suggested that maybe we could best do that in
10 argument, but whatever you want to do I'm comfortable with
11 doing.

12 THE COURT: Well, let me just ask, Mr. Lewis, you have
13 one witness you're calling tomorrow? Am I correct?

14 MR. LEWIS: Yes, Your Honor, and probably two
15 exhibits, one of which has already been introduced.

16 THE COURT: All right. So it doesn't sound like we're
17 going to consume a great deal -- you'll obviously have cross-
18 examination, Mr. Garber -- but it doesn't sound like we'll
19 consume a great deal of time tomorrow.

20 So I think what would be best to do is, we'll defer
21 dealing with the exhibits until the close of the evidence
22 tomorrow. And we'll see where things stand, because you both
23 inquired about post-trial briefing, and I really want to see
24 where we are at the end of the evidence as to what I think
25 would be helpful to the Court, okay.

1 So what I would ask, Mr. Garber, is subject to
2 resolving the issues regarding the admissibility of your
3 exhibits, do you rest?

4 MR. GARBER: Yes, Your Honor, I do.

5 THE COURT: Okay.

6 Mr. Lewis, is there anything that you want to cover
7 now? Your -- it's your turn, your case. I know you only have
8 one witness and that'll be tomorrow morning, but is there
9 anything you want to take any time to do now or do you want to
10 wait until the morning?

11 MR. LEWIS: No, Your Honor, I think tomorrow morning
12 is all I have left.

13 THE COURT: Okay.

14 MR. LEWIS: And I appreciate the Court's indulgence
15 and I know Mr. Cunningham does.

16 THE COURT: I set the two days aside. You've both
17 been very efficient in preparing for the trial and organizing
18 your exhibits and evidence, and I always try to accommodate
19 scheduling issues that arise with witnesses and things like
20 that, and you certainly have notified me in advance, so I have
21 no problem about it. Okay?

22 MR. LEWIS: Very well, Your Honor.

23 THE COURT: I'll see you both in the morning.

24 MR. LEWIS: Thank you, Your Honor.

25 THE COURT: We'll start at 10 and --

1 MR. LEWIS: I'll imagine we'll be done by noon.

2 THE COURT: Okay. Thanks very much.

3 MR. GARBER: Thank you, Your Honor.

4 THE COURT: And I will so order that pre-trial order.
5 It'll get entered on the docket. You have it just without my
6 signature on it, so okay?

7 MR. LEWIS: Thank you, Your Honor.

8 MR. GARBER: Thank you, Your Honor.

9 Your Honor, before you --

10 THE COURT: You can leave your stuff in the courtroom
11 if you wish. You don't have to --

12 MR. GARBER: Oh, okay.

13 THE COURT: Go ahead, Mr. Garber.

14 MR. GARBER: Before you sign the document, I wanted to
15 bring up one point to the Court's attention.

16 THE COURT: Okay.

17 MR. GARBER: I can do that tomorrow in the pre-trial
18 order.

19 THE COURT: Well, you better tell me now --

20 MR. GARBER: Okay.

21 THE COURT: -- if it's in regard to the pre-trial
22 order.

23 MR. GARBER: Here's the issue that I have. There's a
24 statement of -- the pre-trial order has a statement that, in
25 fact, on all the mortgage statements that were sent through

1 GMAC they had this QWR address. And the testimony that we have
2 had is that they don't know if they had any address on any of
3 the pre-trial orders. I am -- I agreed to that. I am happy to
4 stand with it. But I want to make sure the Court and Mr. Lewis
5 knows that I intend to make an issue of that on cross-exam --
6 or on my argument. And if he wants to bring in any other pre-
7 trial statements, I want to make sure he's aware that I'm --

8 THE COURT: All right. I'm aware of what you said.
9 Okay. We'll see you tomorrow morning.

10 MR. GARBER: Thank you.

11 MR. LEWIS: Thank you, Your Honor.

12 THE COURT: Thank you. Again, you can leave anything
13 you want in the courtroom. We're going to lock up the court --
14 there's nothing -- I don't have any other hearings today, so
15 we'll lock up the courtroom and --

16 MR. LEWIS: And who would want to steal this? What
17 about it?

18 (Whereupon these proceedings were concluded at 2:29 PM)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Penina Wolicki

PENINA WOLICKI

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Date: June 11, 2015